IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA, Plaintiff,	)	
	)	Case No. 76-CF-000912
v.	)	
CLIFFORD WILLIAMS, Defendant-Movant	)	

MOTION TO DECLARE PORTIONS OF CHAPTER 961, FLORIDA STATUTES, "VICTIMS OF WRONGFUL INCARCERATION COMPENSATION" UNCONSTITUTIONAL

Clifford Williams, by and through undersigned counsel, pursuant to the Fourteenth Amendment to the United States Constitution, and Article 1, §2 of the Florida Constitution, respectfully requests this Court enter an order declaring unconstitutional portions of Chapter 961, Florida Statutes, specifically §961.04, §961.06(e), and portions of §961.03. Further, Mr. Williams respectfully requests this Court declare §961.03 invalid to the extent it contravenes *Nelson v. Colorado*, 137 S. Ct. 1249 (2017). In support, Mr. Williams states as follows:

CASE HISTORY

On May 2, 1976, police arrested and charged Clifford Williams ("Clifford") and his co-defendant and nephew Nathan Myers ("Nathan") with first-degree murder and attempted first-degree murder, following the shooting of Jeanette Williams, who died as a result of her injuries, and Nina Marshall, who survived her injuries. Two months later, the State tried the two men together, but the Court granted a mistrial after the State made an improper closing argument. Following a two-day jury trial on September 1-2, 1976, a jury, relying primarily on the testimony of surviving witness Nina Marshall, again convicted both Clifford and Nathan.

On September 7, 1976, after the State sought the death penalty, the jury rendered an advisory verdict of life imprisonment on Count I for Clifford and Nathan. On October 27, 1976, this Court overrode the jury's recommendation and imposed a sentence of death for Count I and 30 years imprisonment for Count II, to run consecutively with regard to Clifford, and a life sentence for Count I, and 30 years imprisonment for Count II, to run consecutively with regard to Nathan.

The First District Court of Appeal affirmed Nathan's conviction and sentence on direct appeal in October 1980, while the Florida Supreme Court affirmed Clifford's convictions, but remanded for resentencing on the first-degree murder conviction, finding that record did not support the judge's imposition of the death penalty. *Williams v. State*, 386 So. 2d 538 (Fla. 1980). Subsequently, Mr. Williams was sentenced to life without the possibility of parole for 25 years. Both men filed a series of post-conviction motions, all of which were denied.

On January 17, 2017, after seeing a news article about Fourth Judicial Circuit State Attorney Melissa Nelson's interest in creating a conviction integrity unit, Nathan Myers sent a letter to the State Attorney's Office claiming his innocence, requesting assistance, and detailing known evidence that supported the assertion. Once the State Attorney's Office Conviction Integrity Review division ("CIR") was created in January 2018, it accepted Nathan's case, and by extension Clifford's, for review and engaged in a comprehensive and thorough review of the case.

The CIR investigation yielded key evidence leading to three factual conclusions: (1) available and new evidence not only contradicted the State's two shooters inside the apartment theory, and star witness Nina Marshall's trial testimony, but actually supported the theory that the shooting was perpetrated by a single shooter from outside the bedroom window; (2) it confirmed that another man, Nathaniel Lawson, confessed to a number of people that he committed the

shooting by himself, and that Lawson was present at the scene at the time of the shooting, and (3) it also confirmed multiple alibi witnesses who recalled being with both Clifford and Nathan at a nearby party at the same time they heard the shots fired during the crime, demonstrating the innocence of both men. Conviction Integrity Review Division Report, at 2-5 [hereinafter CIR Report].

The CIR Report also concluded that certain material items of evidence that would have supported the single shooter at the window theory were apparently not disclosed in discovery, and that defense counsel was constitutionally ineffective for failing to use available evidence to debunk the unsubstantiated two shooter in the bedroom theory and present exculpatory alibi evidence. *Id.* at 6, 30, 42, 43.

The evidence reviewed and developed in the investigation described led the CIR to a number of significant conclusions:

1. "A jury presented with the evidence known by the CIR could not conclude, beyond a reasonable doubt, that either defendant committed the shooting and murder." *Id.* at 40.
2. "These men would not be convicted by a jury in 2019 if the jury were presented with all the exculpatory evidence." *Id.* at 44.
3. "**There is no credible evidence of guilt**, and likewise, **there is credible evidence of innocence**." *Id.*

Based on these legal conclusions, the CIR recommended that both Clifford's and Nathan's convictions and sentences be vacated, and that all charges against them be dismissed. *Id.* at 44. The CIR presented these investigative findings and legal conclusions to the Independent Audit Board ("IAB") and the IAB unanimously found that:

> [T]here is not sufficient evidence of guilt to support the Defendants' convictions. Additionally, although there is no definitive proof, such as DNA evidence, the panel agreed that there was sufficient credible evidence to support a finding that the defendants are, in fact, probably **innocent of the charges**.

CIR Report, at 43. (Emphasis added).

On February 25, 2019, the CIR disclosed its Report to undersigned counsel, who thereafter filed a Notice of Appearance in this Court. On March 28, 2019, Clifford and Nathan filed separate Motions to Vacate their convictions and sentences pursuant to Fla. R. Crim. P. 3.850 based on the newly discovered evidence of the CIR Report.[1]

The State consented to the relief requested and stipulated that, upon the Court's issuance of an order granting the motion, it would file a Notice of Nolle Prosequi, dropping pending charges in the matter. Following a brief hearing on the motion held March 28, 2019, this Court issued an order granting both Clifford's and Nathan's motions.

In that order, this Court found as follows:

1. "This Court finds that the contents and findings contained in the CIR report support relief being granted." 3-28-19 Order Granting Relief, pg. 2.[2]
2. "The evidence discovered since the former trial . . . is indeed material and goes directly to the merits of the case. This evidence is not merely cumulative." *Id.*
3. "[I]interpretation [of the law] is founded on the principles of justice. Justice is the paramount, indeed the exclusive interest, which concerns us. In this case justice requires that a jury, if the State proceeds on this case, should hear the evidence before the Defendant may be convicted and imprisoned for the crimes with which he is charged." *Id.*

[1] Clifford's motion, as well as the attachments to the Motion, including the CIR Report, are attached at Tab A.
[2] The Order is attached at Tab B.

4. "Thus, the newly discovered evidence is of such a nature that would probably produce an acquittal on retrial." *Id.* at pg. 4.

Immediately following this Court's oral pronouncement, the State orally dismissed the charges against Clifford and Nathan, and both men were released. Both men are now seeking compensation under the Victims of Wrongful Incarceration Compensation Act. Nathan is eligible under the statute, while Clifford is not. As such, Clifford brings this constitutional challenge to the provision of the statute disqualifying him from eligibility, as well as to the $2 million cap on compensation.

HISTORY OF THE VICTIMS OF WRONGFUL INCARCERATION COMPENSATION ACT

The Florida Legislature passed the Victims of Wrongful Incarceration Compensation Act during the 2008 legislative session[3] following several failed attempts during prior legislative sessions to pass a similar Act. The Act was the legislature's attempt at streamlining the existing legislative process for a wrongfully-convicted persons to obtain compensation, which was through a legislative claim bill, a complicated and arduous process by which an individual could attempt to be compensated.

Prior the Act, the only means by which a wrongfully-convicted individual could seek compensation from the State, outside of litigation, was through a legislative claim bill, "a bill that compensates a particular individual or entity for injuries or losses occasioned by the negligence or error of a public officer or entity."[4] This process, by legislative staff's own admission, is "complex and confusing." Claim Bill Manual, pg. 1. At the outset, all bills must be filed by August 1 in

[3] The Senate bill was SB 756, with HB 1025 as the House companion bill.
[4] *See Legislative Claim Bill Manual* (2016), SENATE ADMINISTRATIVE PUBLICATION, pg. 2, *available at* https://www.flsenate.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/leg-claim-manual.pdf [hereinafter Claim Bill Manual].

advance of the following year's legislative session to be considered during that session. Further, a claimant must find sponsors in both chambers of the legislature, or the bill will not move forward. *Id.* The process is entirely discretionary and overtly political, making it an unreliable process for wrongfully-convicted individuals seeking compensation. Indeed, staff analyses for SB 756, the 2008 Senate bill creating the Act, acknowledge the rigor of obtaining compensation through this process:

> Legal commentators have noted that claim bills often are not a simple or effective remedy for compensating wrongfully incarcerated persons. The discretionary nature of claim bills precludes these bills from effectively providing relief to those wrongfully incarcerated. The success of a claim bill may be driven by political connections and the political climate of the day, rather than the true merits of the claim. Moreover, the process can be lengthy, and the outcome is rather uncertain.

CS/SB 756 Bill Analysis and Fiscal Impact Statement of the Professional Staff of the Senate Judiciary Committee, March 26, 2008.

Very few wrongfully-convicted individuals have been compensated through a claim bill. Of Florida's 72 exonerees, only four have received any compensation through this process.[5] Todd Neely was not directly compensated, but his parents were compensated $150,000 for losses incurred in paying for his defense. *Id*. Wilton Dedge was compensated $2 million for his 22 years of wrongful incarceration with the passage of SB 12B during the 2005 special session, and was the only individual of the four to be compensated after only one legislative session. Both Alan Crotzer and William Dillon[6] were compensated, but Crotzer was compensated after two legislative

[5] Three additional individuals (Freddie Lee Pitts, Wilbert Lee, and Jesse Hill) have been compensated through the claim process, but they are not officially on the National Registry of Exonerations as their exonerations occurred prior to 1989, the earliest of cases catalogued by the Registry.

[6] Dillon is the only individual who has been compensated through a claim bill since the passage of the 2008 version of the Victims of Wrongful Incarceration Compensation Act. No individual has been compensated through a claim bill since the passage of the 2017 version of the Act.

sessions[7] and Dillon was compensated after three legislative sessions.[8] Four other individuals, Scotty Bartek, Larry Bostic, Frank Lee Smith, and Clinton Treadway all attempted to receive compensation through a claim bill and failed. All but Scotty Bartek, who only made a single attempt to seek compensation through a claim bill, tried twice.

It was against this backdrop, and with the understanding that exonerations resulting from exculpatory DNA results were on the rise,[9] that the legislature introduced the Victims of Wrongful Incarceration Compensation Act. Indeed, at the time of the initial legislation, there had been nine exonerations in Florida alone since 2000 resulting from DNA analysis. *Id.* Now, however, there have been 20 DNA exonerations in Florida between 1989 and today, but DNA exonerations account for less than one-third of Florida's 72 exonerations.[10] These 72 individuals have served and more than 800 years in prison for crimes they did not commit, with an average sentence of 11 years.

Under the original version of the Act, wrongfully-convicted individuals who met certain requirements could petition the State to receive compensation for their wrongful incarceration. Fla. Stat. § 961.04 (2008). The prosecuting authority is given an opportunity to respond to the petition, and if the State certifies to the court that there will be no further criminal proceedings in the case for which the petitioner was wrongfully incarcerated, that no questions of fact remain with respect to the wrongful incarceration, and that petitioner is not ineligible from seeking compensation, the

[7] Crotzer was compensated with the passage of HB 7037 during the 2008 legislative session. He received $1.25 million for his 24 years of wrongful incarceration. During the 2007 legislative session, a claim bill seeking compensation for Crotzer (SB 50) died in committee.

[8] Dillon received $1.34 million for his 27 years of wrongful incarceration with the passage of SB 2 during the 2012 legislative session. Prior claim bills during both the 2010 and 2011 sessions (SB 22 and SB 23 respectively), both died in committee.

[9] At the time the Act was initially introduced, the Innocence Project of Florida("IPF") only accepted cases where DNA was involved. Now, IPF accepts all cases where there is evidence of factual innocence.

[10] *See* National Registry of Exonerations, *available at* http://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx (last visited May 30, 2019).

court will then issue an order certifying that the petitioner was a wrongfully-incarcerated person eligible for compensation. *See* Fla. Stat. § 961.03 (2008). From there, a petitioner, using the court order, has two years to apply for compensation by providing a number of supporting documents to the Department of Legal Affairs of the Attorney General's Office ("DLA"). Fla. Stat. § 961.05 (2008). Once the DLA determines the individual meets the requirements of the act, he then becomes entitled to compensation. Fla. Stat. § 961.05(6) (2008).[11]

Under the Act, recipients are eligible for $50,000 per year for each year of wrongful incarceration; a tuition and fee waiver for up to 120 hours of instruction at any career center, community college, or state university; the amount of any fine, penalty, or court costs; the amount of attorney's fees paid in connection with the wrongful incarceration; and administrative expunction of the individual's criminal record. Fla. Stat. § 961.06 (2008). The amount the individual can receive, excluding the tuition waiver, is capped at $2 million. *Id.*

In an attempt to narrow the scope of the bill, the legislature included a provision, referred to as the "clean hands" provision, that disqualified individuals who had been convicted of, or pled guilty or nolo contendere to <u>any</u> felony offense either prior to or during their wrongful incarcerations, as well as individuals who were concurrently serving a sentence for a felony for which they had not been wrongfully convicted, from seeking compensation under the statute. Fla. Stat. § 961.04 (2008).

While many legislators expressed concerns with the provision, clean hands proponents argued that they did not have an interest in denying compensation to those with prior felonies, only that they did not want those with prior felonies to be able to use the same statutory process. During the March 12, 2008 House Safety & Security Council meeting discussing the bill, Representative

[11] Fla. Stats. §§ 961.03 and 961.05 remain unchanged by the 2017 amendments to the Act.

Ellyn Bogdanoff, the bill's sponsor, acknowledged the concern over the provision, but stated that the purpose of the clean hands provision was so there would be a more "deliberative process" for those individuals who had a prior felony conviction.

> There is a sense, that I would wholeheartedly agree with, that if you do have a prior felony, it should be a more deliberative process. This is an automatic trigger. You walk out of prison, you petition, there's a trigger, you're actually innocent, you get your money, whereas a claims bill process, we have an opportunity to do a little bit more research, a little bit more investigation.

Rep. Bogdanoff, House Safety & Security Council meeting, March 12, 2008, 09:08:00 [hereinafter 3-12-08 House Safety].[12] Representative Perry Thurston said that the fact that individuals have a prior conviction is one of the reasons they are wrongfully convicted, so he was troubled by the inclusion of the provision. *Id.* at 09:55:00. In response, Rep. Bogdanoff expressed that the line had to be drawn somewhere.

> We are dealing with taxpayer's money, and it's very hard to draw the line. You know, where do we draw the line, how many convictions, what convictions? And that it should be a more deliberative process if somebody does have a prior felony, because I do not believe that the citizens of this state would have an appetite to provide compensation to someone who had perhaps maybe two or three prior violent felonies. And ultimately that could conceivably happen in a bill where it says prior felonies, or even any level of a felony. And I think that what they would expect of us as lawmakers and as appropriators is to say, be a little bit more deliberative. Have that research done and make sure that if you're going to compensate somebody, it's somebody who has not necessarily been horribly offensive of the laws of this country and state.

Rep. Bogdanoff, 3-12-08 House Safety, 11:02:00-11:42:56. Representative Nicholas Thompson agreed and commended Rep. Bogdanoff, noting that while wrongfully-convicted individuals without prior felonies were "truly innocent," those with prior felonies did not deserve the same

[12] Undersigned counsel obtained the audio of this meeting, as well as the House Policy & Budget Council meeting, from State Archives, as such, these meetings are not filed with this motion; however, copies of the meetings are retained by undersigned counsel and available at this Court's request.

process. *Id.* at 43:32:00-43:57:00. Representative Maria Sachs, an attorney, told the committee she had constitutional concerns about the bill.

> I have to say this. We cannot make a private class of citizens in this country. The U.S. Constitution guarantees recourse. If someone is previously convicted of a felony, that doesn't mean that person is in a separate class than anyone else who may have had that in their background. I think it's against due process for folks who may have had a prior felony conviction.

Rep. Sachs, 3-12-08 House Safety, 46:00:00-46:55:00. Rep. Bogdanoff told members of the committee that while the line was difficult to draw, Senate leadership found the clean hands provision vital to the bill. *Id.* at 48:40. The bill ultimately passed the committee and went on to the House Policy & Budget Council Committee where members again debated the provision.

Representatives Curtis B. Richardson and Bill Galvano attempted to strike the language from the bill, noting that individuals like Alan Crotzer, who spent 24 years wrongfully incarcerated, would be excluded under the statute as he had a prior felony. Rep. Bogdanoff again insisted that while Mr. Crotzer would be disqualified from applying under the compensation statute, he was not disqualified from seeking compensation through a claim bill, which he was in fact doing at the time of the debate.

> I think it's probably inappropriate to say that somebody who has a 5-page rap sheet,[13] or you know, has perhaps maybe a violent past that would automatically receive compensation without future legislators determining how much that compensation should be. And how many can they have? It's very difficult to draw a clear, bright-line in terms of who should or should not be eligible. I do not take the position that, you know, all wrongful incarcerations deserve the same amount of money.

Rep. Bogdanoff, House Policy & Budget Council meeting, March 18, 2008, 55:11:00-56:00:00 [hereinafter 3-18-08 House Policy]. Rep. Bogdanoff went so far as to say that not every

[13] None of Florida's 72 exonerees have anywhere close to a five-page rap sheet.

wrongfully-convicted person, particularly if he or she has only served one or two years[14] and has a three-four page rap sheet, deserves compensation from the state. She further added that while not perfect, the bill was an important "first step." She also noted that the provision was a "must-have" for the Senate.

Rep. Galvano disagreed, arguing that once a person has served his sentence and paid his debt to society, he is whole. "If they are wrongfully convicted and incarcerated Representative Bogdanoff, they're wrongfully convicted and incarcerated, and their past history has nothing to do with the current crime." He further said that if the State wrongfully incarcerates someone, "that person has every right to be compensated as would anyone else." 3-18-08 House Policy, 58:12:00-59:12:00. Ultimately, the attempt to strike the clean hands provision failed and the bill with the provision in tact passed the committee.

During the Senate Judiciary Committee meeting, more debate ensued about the clean hands provision. After an attempt to limit the disqualification of all felons to certain felons failed, Senator Don Gaetz referred to the attempt to limit the number of felonies as a "moral crusade," while Senator Carey Baker blamed the wrongfully convicted for their inability to be compensated. "Well, you know, they should not have engaged in a lifetime of criminal behavior [that would exclude them from payment]." Sen. Baker, Senate Judiciary Committee meeting, March 25, 2008 [Hereinafter 3-25-08 Senate Judiciary].[15] The bill passed committee.

During the Senate Criminal and Civil Justice Appropriations Committee meeting, Senator Arthenia Joyner, the bill's Senate sponsor, acknowledged that the bill was not what everyone wanted.

[14] Florida's 72 exonerees have served an average sentence of 11 years, with 32 having sentences of ten years or greater. *See* National Registry of Exonerations.
[15] This meeting is available online at https://thefloridachannel.org/videos/32508-senate-judiciary-committee/.

> The bill is far from perfection and it doesn't represent the best of what everybody wants. It's not all of what I really want. It's just a beginning point because hopefully those two persons whom we've been enumerating would qualify to take . . . will in fact take under this bill.

Sen. Joyner, Senate Criminal and Civil Justice Appropriations Committee meeting, April 15, 2008, 12:11:00-12:35:00 [hereinafter 4-15-08 Senate Criminal & Civil Justice Appropriations].[16] She further noted that while she personally did not agree with the clean hands provision, the legislative process required compromise.

During the final reading of the bill during the Senate floor session, Sen. Joyner closed on the bill by imploring the Senate to do the right thing and vote for the bill, despite disagreements about the inclusion of the clean hands provision.

> So today I know that many of us are not happy with this final product but everybody can't be pleased all the time. . . . The inclusion of the clean hands provision should have been omitted, and I agree; however, please know that this is Florida's first step, this is a watershed moment in our history, where we attempt to create a fair process. The claims bill provision is still available to those who will not be able to take under this bill. Hopefully as the future arrives and we evolve that we will come to the point in time wherein the Clean Hands provision can come out of the bill, but today it's there, we have to live with it. We have to know this is a first step.

Sen. Joyner, Senate floor session, April 23, 2008, 38:05:00-40:3:00.[17] The bill passed and became effective July 1, 2008.

While the Act did evolve in 2017, the future did not bring the total elimination of the clean hands provision; instead, it narrowed the class of ineligible felons to those who had been convicted of either a violent felony either before or during their wrongful incarceration, or more than one non-violent felony before or during their wrongful incarceration. Fla. Stat. § 961.04 (2017). It left

[16] This meeting is available online at https://thefloridachannel.org/videos/41508-senate-criminal-civil-justice-appropriations-committee/.
[17] This session is available online at https://thefloridachannel.org/videos/42308-senate-session/.

intact ineligibility for those serving a concurrent sentence for any felony for which the person was not wrongfully convicted.

In revisiting the 2008 Act, the legislature recognized that only four people had been compensated under that statute. Senator Rob Bradley, who sponsored SB 494 to amend the Act, noted that Florida was the only state of 32 states with similar statutes that had a clean hands provision. Indeed, even today, 33 states, the District of Columbia and the federal government have some form of compensation statute; Florida remains the only state to have such a provision.[18] Bradley told the Senate Criminal Justice Committee that it was time to "address this unequitable provision." Sen. Bradley, Senate Criminal Justice Committee meeting, February 21, 2017, 42:46:00 [hereinafter 2-21-17 Senate Criminal Justice].[19] In debating the bill, Senators Jeff Brandes and Darryl Rouson both supported the bill, but encouraged the removal of the clean hands provision in its entirety. Sen. Brandes stated that if the state got it wrong, an individual's past should not matter, while Sen. Rouson noted that though incremental change is good, he would like to see the bill go further.

Based on those statements, during the bill's next committee stop in Senate Judiciary, Senator Bradley introduced an amendment to remove the clean hands provision in its entirety, which passed. *See* Senate Judiciary Committee meeting, March 7, 2017.[20]

Meanwhile, the House considered SB 494's companion bill, HB 393, introduced by Representative Bobby Dubose with the clean hands provision intact. During the House Criminal Justice Subcommittee meeting on March 28, 2017,[21] Representative Julio Gonzalez asked whether

---

[18] *See* state by state compensation laws, Innocence Project, *available at* https://www.innocenceproject.org/wp-content/uploads/2017/09/Adeles_Compensation-Chart_Version-2017.pdf

[19] This committee meeting is available online at https://thefloridachannel.org/videos/22117-senate-criminal-justice-committee/.

[20] This meeting is available online at https://thefloridachannel.org/videos/3717-senate-judiciary-committee/.

[21] Available online at https://thefloridachannel.org/videos/32817-house-criminal-justice-subcommittee/.

there had been any constitutional challenges by a disqualified felon, and Rep. Dubose said there had not. In debating the bill, Rep. Gonzalez said that while he was in favor of the bill, he found it inherently unfair to prohibit someone from being qualified to receive compensation under the statute based on a prior event, and urged removal of the clean hands provision. Representative Dan Raulerson agreed, stating that if an individual has paid his debt for a prior conviction, and is subsequently wrongfully convicted, he is entitled to compensation. In closing on the bill. Rep. Dubose noted that while he personally believed the clean hands provision should be removed, the bill was moving in the right direction.

During the April 27, 2017 Senate floor session,[22] Senator Bradley told fellow senators that he had come to an agreement with the House to modify the bill to return the amended clean hands provision to the Senate Bill. The bill, with the clean hands provision disqualifying multi- and violent felons, passed both chambers and became effective October 1, 2017. Since that time, no individuals have been compensated either through a claim bill or through the statute.

ARGUMENT

I. The "Clean Hands" Provision Violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article 1, §2 of the Florida Constitution in that it Treats Similarly Situated Exonerees Differently, and the Provision has no Rational Relationship to any Legitimate State Objective.

Article 1, § 2 of the Florida Constitution States that "[a]ll natural persons, female and male alike, are equal before the law." Under this Clause, which is construed like the Fourteenth Amendment equal protection clause, individuals who are similarly situated must be treated similarly. *Estate of McCall v. United States*, 663 F. Supp. 2d 1276, 1302 (N.D. Fla. 2009), rev'd in part on other grounds. While a state may make classifications in legislation, "it may not do so

[22] This session is available online at https://thefloridachannel.org/videos/42717-senate-session-part-1/.

on the basis of invidious discrimination against a particular class." *Id.* In evaluating an equal protection challenge, the rational basis test applies unless a suspect class or fundamental right is implicated. *Estate of McCall v. United States*, 134 So. 3d 894, 901 (Fla. 2014). Here, as there is no suspect class and no fundamental right involved, this Court must evaluate the challenge under the rational basis test, which requires a statute to "bear a rational and reasonable relationship to a legitimate state objective, and it cannot be arbitrary or capriciously imposed." *Id.* Indeed,

> It is well settled that the equal protection clause is violated only when the classification made by an act is arbitrary and unreasonable. When the differences in treatment between those included and those excluded from the class bear a real and substantial relation to the purposes sought to be attained by the act, the classification is valid as against an attack under the equal protection clause.

Daniels v. O'Connor, 243 So. 2d 144, 146 (Fla. 1971). Here, it clear from the legislative history that the exclusion of some felons and not others from the compensation statute is entirely arbitrary, and that there is no rational and reasonable relationship to any legitimate state objective. In fact, the inclusion of the clean hands provision appears to have been an entirely political decision, as opposed to one based in policy. As such, this Court should strike down Fla. Stat. § 961.04 as unconstitutional.

a. <u>The Exclusion of Violent Felons and Two-Time Felons from Compensation is Arbitrary</u>.

As evidenced by the 2017 amendments to the clean hands provision, the exclusion of certain felons from eligibility is entirely arbitrary. During the 2008 legislative session, the bill moved forward excluding all felons, with the rationale that if an individual had a prior felony, then compensation for that individual required a more deliberative process. There was no real argument that those people should be excluded from receiving compensation at all, just that they should not receive compensation through the Victims of Wrongful Incarceration Compensation Act. Indeed, individuals who commit felonies *after* a wrongful incarceration are not disqualified from receiving

compensation under the Act. Then, in 2017, recognizing that excluding all felons was too broad,[23] the legislature amended the clean hands provision to exclude only those who had committed violent felonies as defined by Fla. Stat. §§ 775.085(1)(c)1 or 948.06(8)(c), and those who had committed more than one non-violent felony, regardless of the type of felony. Those two statutes, however, deal with "violent offenses" for purposes of sentencing and probation violation, respectively, and have no relationship to compensation and wrongful incarceration.

For instance, while those two statutes enumerate a number of felonies, glaringly absent from the list of violent felonies is human trafficking, a first-degree felony. Fla. Stat. § 787.06. Thus, a person who is convicted of attempting to burn down an unoccupied structure and fails would be disqualified from seeking compensation for a separate wrongful conviction, while a person convicted of human trafficking would not.

Other crimes that are serious felonies, but would not be disqualifying because they are not "violent" are as follows: human smuggling, third-degree felony, Fla. Stat. §787.07; grand theft of property worth more than $100,000, first-degree felony, Fla. Stat. §812.014; theft of more than $50,000 from a person older than 65, first-degree felony, Fla. Stat. §812.0145; killing or mutilating horses or cattle, second-degree felony, Fla. Stat. §828.125; criminal anarchy, second-degree felony, Fla. Stat. §876.02; buying a human organ, second-degree felony, Fla. Stat. §873.01; and finally organizing a gang is a first-degree felony that is not a "violent" felony under the statute. Fla. Stat. §874.10. While not exhaustive, the list is demonstrative of the arbitrariness of the classification. And, as discussed *infra*, the arbitrariness of the classification obliviates any potential argument that the classification bears any rational relationship to a legitimate state objective.

[23] Of Florida's 72 exonerees, fewer than twenty have no criminal history at all, nine have prior violent felony convictions, an additional 30 had prior non-violent felony convictions, and at least eight of those had more than two felonies. Finally, four had prior homicide convictions.

Similarly, the multi-felon classification is arbitrary. For instance, a person could have been caught using a fake ID in his youth, a third-degree felony, Fla. Stat. § 322.212, and then later been convicted of delivery of drug paraphernalia, i.e., giving someone a pipe, another third-degree felony, Fla. Stat. § 893.147, and be disqualified under the statute, yet, the person convicted of human trafficking would still be eligible.

As demonstrated by the above, if the goal of the legislature is to exclude people who are serious criminals, the current clean hands provision fails to accomplish this purpose. Clearly, there are multiple instances where someone who had a single felony that was very serious or violent, but happens not to be enumerated, would not be excluded, but someone who has more than one relatively minor previous felony conviction, even where they never actually spent any time in prison on the prior convictions, would be excluded. Thus, the line drawn by the legislature makes no sense and is arbitrary.

During the House Policy and Budget Council Meeting, Rep. Galvano noted that this classification was not required in other contexts.

> If we have wrongfully incarcerated someone and it's worthy of compensation we shouldn't disqualify them on past conduct that has existed on its own right, had its own sanctions, and have been complied with, it's tantamount to saying if you're in a car wreck and it's your fault, and then ten years later you get in another wreck and it's someone else's fault, you shouldn't be able to be compensated because at some point in your history you were in a car wreck and it was your fault.

Rep. Galvano, 3-18-08 House Policy, 53:38:00-54:20:00. Indeed, undersigned counsel is unaware of any other statutory scheme—in tort, in taking of property, or otherwise—wherein an individual's past unrelated bad acts disqualify them from compensation when he has been wronged by the state.

b. <u>The Clean Hands Provision Bears no Reasonable Relationship to any Legitimate State Objective.</u>

Setting aside that the classification of disqualifying some felons while not others is entirely arbitrary, the classification scheme not only has no rational relationship to a legitimate state objective, but in fact, it undermines that objective. Indeed, by the very title of the Act, "Victims of Wrongful Incarceration Compensation Act," Fla. Stat. § 961.01, the purpose of the Act is to provide compensation for those who have been wrongfully incarcerated. Despite that, since the passage of the Act in 2008, only four individuals[24] have been compensated under the statute, despite many more being victims of wrongful incarceration.

At the outset, the legislature never proffered any specific objective in implementing the clean hands provision. It is clear there is no issue compensating an individual with prior felony convictions, even violent ones, as the legislature passed claim bills for both William Dillon, who had a prior drug possession conviction, a third-degree felony, and Alan Crotzer, who had a prior armed robbery, a violent felony conviction. Indeed, in several debates about the clean hands provision, multiple legislators indicated that convicted felons would still be able to use the claim bill process. Further, at one point, the clean hands provision was removed entirely from the Senate bill, and then after discussion with the House, it was returned to the bill. The clean hands provision was a clear political compromise, with no basis in policy and advancing no legitimate state objectives.

During committee debate of the 2008 version of the statute, Sen. Joyner said that she believed that once someone has paid his debt for a prior conviction, that should be enough, "but sometimes in this legislative process we have to compromise and this represents a compromise . . . One does not get everything they want here or in life." 4-15-08 Criminal and Civil Justice Appropriations, 12:56:00-14:32:00. Sen. Bogdanoff, in stating that it was difficult to draw a line,

[24] Leroy McGee was compensated in 2010, James Bain in 2011, Luis Diaz in 2012, and James Richardson in 2015.

said that it was important to Senate leadership to have a provision that there be no prior felonies. 3-12-08 House Safety & Security, 48:40:00.

The political nature of the provision is evidenced by the 2017 amendments, where there was no longer a concern about *all* prior felonies, but rather about a new arbitrary class of felonies, or two or more felony convictions. Not only does the classification not achieve the objective of compensating wrongfully convicted individuals, it also fails to consider the severity of the felony, how far removed from the wrongful conviction the prior felony conviction was, and the exoneree's age at the time of the prior conviction.

Further, it is clear from the legislative history that the classification does not advance any objective and is instead designed to be punitive. Rep. Baker expressed no sympathy for those who might be disqualified, essentially arguing, too bad, "they should not have engaged in a lifetime of criminal behavior," never mind that the statute originally disqualified any felony conviction, and now disqualifies one violent offense or two non-violent offenses, and that regardless of any past behavior, Florida's exonerees have wrongfully served an average of 11 years. 3-25-08 Senate Judiciary, 18:53:00-19:06:00. Sen. Bogdanoff stated that Florida taxpayers, would not "have an appetite to provide compensation to someone who had perhaps maybe two or three prior violent felonies," suggesting that taxpayers would find the state's wrongful incarceration of prior felons somehow more just or less morally reprehensible than its wrongful incarceration of those with no prior records. 3-12-08 House Safety & Security, 11:02:00-11:42:56. Like Baker, Rep. Thompson seemed to find wrongfully convicted prior felons less innocent or not "truly innocent." "I think truly innocent people who are wrongfully convicted do deserve the ability to go through this part of the process, but those who have chosen to violate our laws and be convicted felons earlier than that maybe don't deserve an expedited process." 3-12-08 House Safety & Security, 43:32-43:57.

In reality, a person who has been wrongfully convicted *is* "truly innocent," regardless of whether he has prior unrelated convictions.

Interestingly, while the clean hands provision signals that those with prior criminal records are less deserving of compensation, a prior criminal records is actually a "substantial" contributing factor to a later wrongful conviction. Paul G. Cassell, *Overstating America's Wrongful Conviction Rate? Reassessing the Conventional Wisdom About the Prevalence of Wrongful Convictions,* 60 ARIZ. L. REV. 815, 848 (2018). In fact, "the rate of exoneration is almost 50 percent higher for those with a criminal record than for those without." *Id.* at 848-49 (internal citation omitted). Florida's data supports this conclusion. Of 72 exonerees, more than half have a criminal record. This is due, in part, to cognitive bias of law enforcement officers who are more likely to be familiar with suspects who have previously been arrested. Furthermore, eyewitness misidentification is the leading cause of wrongful convictions,[25] and an individual is far more likely to end up in a photo array to be misidentified if he had a prior arrest.

That aside, there is no rational relationship between the purpose of the Act to compensate wrongfully convicted individuals and disqualifying those very wrongfully convicted individuals they seek to compensate because of prior, unrelated felony convictions. While the burden on the challenger is a heavy with respect to rational basis, it is not insurmountable. Florida courts have found statutory provisions unconstitutional under the rational basis test in a number of cases raising

[25] *See* The Innocence Project, The Causes, at http://www.innocenceproject.org/causes-wrongful-conviction/eyewitness-misidentification (last visited August 24, 2018) (noting that "[e]yewitness misidentification is the greatest contributing factor to wrongful convictions proven by DNA testing, playing a role in more than 70% of convictions overturned through DNA testing nationwide). Furthermore, a U.S. Department of Justice study of 28 cases in which individuals were wrongly convicted and later exonerated by DNA testing found that in every case, except for homicides, the victim(s) had misidentified the defendant prior to and at trial. *See* Edward Connors, et al., *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial*, 15 (National Institutes of Justice, Office of Justice Programs, U.S. Department of Justice) (1996). The Department of Justice report states, "[I]n the majority of these cases, given the absence of DNA evidence at trial, the eyewitness testimony was the most compelling evidence. Clearly however, those eyewitness identifications were wrong." *Id.*

equal protection challenges. *See, e.g., Fla. Dep't of Children & Families v. Adoption of X.X.G.*, 45 So. 3d 79, 91 (Fla. 3d DCA 2010) (finding that the Department of Children and Family's ban on homosexual adoption was not rationally related to any legitimate purpose, and thus violated equal protection); *N. Broward Hosp. Dist. v. Kalitan*, 219 So. 3d 49, 56 (Fla. 2017) (Holding that statutory caps in personal injury actions "violate equal protection under the rational basis test because the arbitrary reduction of compensation without regard to the severity of the injury does not bear a rational relationship to the Legislature's stated interest in addressing the medical malpractice crisis); *Joseph v. Henderson*, 834 So. 2d 373, 376 (Fla. 2d DCA 2003) (finding an agency's operating procedure unconstitutional as applied where the agency assessed a fee for a state inmate return to the jail on one type of writ while not assessing that fee for state inmates returned to the jail on another type of writ. "Because we cannot say that the distinction drawn between the two writs bears a fair and substantial relation to the object of the legislation, we conclude that the sheriff's standard operating procedure violates Joseph's right to due process and equal protection in this instance."); *D.M.T. v. T.M.H.*, 129 So. 3d 320 (Fla. 2013) (The legislature's statutory differentiation between same-sex and heterosexual couples with respect to requirement that donor of biological material relinquish parental rights, allowing heterosexual couples to retain those rights, but not same-sex couples, did not implicate any potential state interest in not extending rights to same-sex couples, as the statute did not extend rights to biological parents, but instead required relinquishment of rights in cases of typical egg or sperm donations.);

Similarly Florida Courts have found a rational relationship to a legitimate state interest in a number of cases. *See, e.g.*, *Samples v. Fla. Birth-Related Neurological*, 40 So. 3d 18, 25 (Fla. 5th DCA 2010) (finding a rational relationship between birth-related neurological injury statute authorizing $100,000 to parents jointly rather than individually "where the intent was to

compensate parents for the added burdens and costs of providing care for a child with permanent and severe neurological injuries, not as damages to make parents whole for the loss of consortium negligently caused, as in a traditional tort action."); *State v. Arrington*, 95 So. 3d 324, 327 (Fla. 4th DCA 2012) (finding a rational basis for the assessment of points on a driver's license where a driver is ticketed based on a law enforcement officer's observance of the violation and no points where the driver is ticketed based on photographs of violations because the latter provides a rebuttable presumption that the "owner" was driving, and allows the "owner" to rebut that presumption.); *G.W. v. State*, 106 So. 3d 83, 85–86 (Fla. 3d DCA 2013) (finding a legitimate purpose for a sentencing enhancement for certain crimes committed against an elected official or school district employee, specifically, that the legislature intended to provide additional protection "to individuals charged with the duty to educate children in schools," and that enhancement was rationally related to that purpose.); *Duncan v. Moore*, 754 So. 2d 708, 713 (Fla. 2000) (finding that requiring conditional release for some prisoners who have been deemed by the Legislature to need additional supervision was rationally related to the State's legitimate purpose, of, among other things, to "dissuade releasee from returning to a life of crime.").

Here, the Legislature provided only one purpose in passing the Act—to compensate victims of wrongful incarceration. The clean hands provision is in no way rationally related to that purpose. Further, the provision imposes an unfair and illogical burden on wrongfully convicted prior felons who do not receive the same rights to full compensation because of an arbitrary classification. *See Estate of McCall v. U.S.*, 134 So. 3d 894 (Fla. 2014). As such, this Court should strike down the clean hands provision, Fla. Stat. §961.04, of the Victims of Wrongful Incarceration Compensation Act.

c. <u>The Clean Hands Provision as Applied to Clifford Williams is Unconstitutional</u>

If this Court does not believe that the clean hands provision is facially unconstitutional, then it should find that the statute is unconstitutional as applied to Clifford Williams. On March 28, 2019, Mr. Williams was exonerated alongside his nephew, Nathan Myers, for the murder of Jeanette Williams and the attempted murder of Nina Marshall. Both he and Mr. Myers faced the same charges for the same crime at the same trial, and were exonerated under the same circumstances based on the same evidence. The only difference—Mr. Myers has only one prior felony, a non-violent drug possession making him eligible for compensation, while Mr. Williams has two prior felonies, attempted arson and robbery, both violent felonies, making him ineligible for compensation.

By the facts of their cases, Myers and Williams could not be more similarly situated. Despite that, one qualifies for compensation while the other does not, based simply on an arbitrary classification scheme. Based on certified copies of convictions, Mr. Williams had two prior convictions, a 1960 attempted arson conviction, and a 1966 robbery conviction. Both of these convictions occurred sixteen and ten years, respectively, before Mr. Williams' wrongful incarceration, and 59 and 53 years, respectively, before Mr. Williams was exonerated after spending 43 years in prison for crimes he did not commit. Thus, despite being wrongfully incarcerated and serving the longest sentence to date of any Florida exoneree, along with Nathan Myers, Mr. Williams is not entitled to compensation due to unrelated crimes he committed when he was 17 years old and 23 years old. Importantly, Mr. Williams entered prison for his wrongful incarceration at age 34, so he spent nearly a decade more incarcerated then he spent as a free man.

The clean hands provision fails to contemplate a historic sentencing landscape. In the 1960s Florida law did not even contemplate the idea of delineating violent felonies or offense levels, so it is difficult to properly characterize these felonies. Further, at least for the attempted arson, the

sentence Williams received seems particularly lenient, suggesting that the crime might not even qualify as a violent felony. As such, to rely on these old, undelineated crimes to disqualify Williams now is incongruous, arbitrary and unfair, Not only was the violent felony offender statute not in existence at the time of Mr. Williams' prior convictions, as it was enacted in 1971, but it did not delineate specific felonies until 1993, a full 33 years after his 1960 conviction and 27 years after his 1966 conviction. *See* Fla. Stat. §775.084 (1993).

In 1960, Mr. Williams served two years in county jail for the crime of "attempted arson." At the outset, this sentence is incongruous with today's sentencing structure, as it more than one year, indicating a felony, but was served in the county jail, indicating a misdemeanor. There is no crime of "attempted arson," but the arson statute from 1959 contemplates attempt; as such, the general attempt statute from 1959, Fla. Stat. § 776.04 (1959), which is only applicable "when no express provision is made by law for the punishment of such attempt," is not at issue. Arson fourth-degree, outlined in Fla. Stat. § 806.04 (1959), is defined as:

> Any person who willfully and maliciously attempts to set fire to or attempts to burn or to aid, counsel or procure the burning of any of the buildings or property mentioned in the foregoing sections, or who commits any act preliminary thereto, or in furtherance thereof, shall be guilty of arson in the fourth degree and upon conviction thereof shall, unless otherwise provided, be punished by imprisonment in the state prison for not more than two years or fined not to exceed one thousand dollars.

Arson fourth-degree is the only crime that fits the punishment received by Mr. Williams, and is the only arson crime dealing with attempt, as such, this appears to be the applicable statute. In 1960, there was no delineation of felonies by offense level. Instead, "[a]ny crime punishable by death, or imprisonment in the state prison, is a felony, and no other crime shall be so considered. Every other offense is a misdemeanor." Fla. Stat. §775.08 (1959). By today's standards, this likely would be a third-degree felony. Because there were no degrees of felonies in the 1960s, arguably

the lesser-degree should apply, which would be a second-degree felony under today's arson statute. Fla. Stat. §806.01(2). Under today's attempt statute, if the offense attempted is a second-degree felony, the offense of criminal attempt is a third-degree felony. Fla. Stat. § 777.04(4)(d) (2008). Mr. Williams was sentenced to eight years for his 1966 robbery conviction. In 1965, there were no degrees of robbery, but all robbery was punishable by imprisonment in the state prison for life or for any lesser term of years, at the discretion of the trial court. Fla. Stat. § 813.011 (1965).

Mr. Williams' prior convictions required him to serve ten years for crimes he did commit; but then the state's errors caused him to serve an additional 43 years for crimes he did not commit. That he is not entitled to compensation is not only constitutionally unsound, but morally repugnant. As such, this Court should strike down the clean hands provision as applied to Clifford Williams.

II. The Cap on Compensation Violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article 1, §2 of the Florida Constitution, both Facially and As-Applied, in that it has no Rational Relationship to any Legitimate State Objective.

Under the Victims of Wrongful Incarceration Compensation Act, in addition to other benefits, such as a tuition waiver and administrative expunction of their criminal records, recipients are eligible for the following financial benefits: $50,000 per year for each year of wrongful incarceration; the amount of any fine, penalty, or court costs; and the amount of attorney's fees paid in connection with the wrongful incarceration. Fla. Stat. § 961.06 (2017). The amount the individual can receive, considering all of those things, is capped at $2 million. Fla. Stat. § 961.06(e). Initially, the amount of fines, penalties, and court costs should be excluded from the cap entirely, as exonerees are entitled to this money regardless. *See* Argument III *infra*. Secondarily, the cap fails to consider the differences in time served. In any event, the cap violates the equal protection clause of the Florida and United States Constitutions as it arbitrarily caps available compensation to *all* claimants without regard to the severity of an individual's sentence,

or the egregiousness of the state's conduct in the wrongful incarceration. Moreover the cap has no rational relationship to any state governmental interest.

In a case involving caps on non-economic damages in personal injury cases arising from medical negligence, the Florida Supreme Court found the caps violated equal protection since they unreasonably and arbitrarily limited the recovery of "those most grievously injured by medical malpractice." *N. Broward Hosp. Dist. v. Kalitan*, 219 So. 3d 49, 58. (Fla. 2017). Similarly, the Florida Supreme Court found the caps were not rationally related to the legislature's stated objective of controlling the state's medical malpractice crisis. In so finding, the Florida Supreme Court relied on its opinion in *Estate of McCall v. United States*, 134 So. 3d 894, 901 (Fla. 2014), where it found the statutory cap on wrongful death non-economic damages unconstitutional. There, the Court noted that "[r]eports have failed to establish a direct correlation between damage caps and reduced medical malpractice premiums." *McCall*, 134 So.3d at 910. As such, in *McCall*, and in *Kalitan,* the Florida Supreme Court found there was no rational relationship between the caps and the legislature's stated interest in controlling the medical malpractice crisis.

Like the cap in *McCall* and *Kalitan*, the caps here have no rational relationship to any legitimate governmental interest. As mentioned previously, the legislature provided only one stated interest in passing the Act—to compensate wrongfully incarcerated individuals. To that end, the Victims of Wrongful Incarceration Compensation Act contemplates that each year a prisoner spends wrongfully incarcerated is worth $50,000. A prisoner having wrongfully served a 20-year sentence, however, has the ability to realize the full value of his compensation, while a prisoner wrongfully having served a sentence of more than 40 years, despite being arguably more aggrieved by the state, will end up with an amount less than the contemplated value of each year of wrongful incarceration.

Using Clifford Williams case as an example, as he served 43 years, he should be entitled to approximately $2,150,000 given the statutory provision that each year of wrongful incarceration is worth $50,000. The cap, however, reduces the amount of Clifford's compensation to $46,000 per year ($2 million divided by 43), valuing each year of his wrongful incarceration at 92% of what another exoneree's year would be valued. Inflation adjustments only make the disparity more pronounced. Fla. Stat. §961.01(1)(a) provides that:

> Monetary compensation for wrongful incarceration, which shall be calculated at a rate of $50,000 for each year of wrongful incarceration, prorated as necessary to account for a portion of a year. For persons found to be wrongfully incarcerated after December 31, 2008, the Chief Financial Officer may adjust the annual rate of compensation for inflation using the change in the December-to-December "Consumer Price Index for All Urban Consumers" [CPI-U] of the Bureau of Labor Statistics of the Department of Labor.

It is unclear whether the rate would start at $50,000 and increase each year based on changes in the CPI-U on a cumulative basis, or if the rate is constant at $50,000 and adjusted only for the year of exoneration. Because Mr. Williams already exceeds the cap, he is unable to take advantage of inflation adjustments, whereas a person who served 20 years and was exonerated in 2019, as Clifford was, would be eligible to receive $59,752 per year if the increase is based on changes in the CPI-U on a cumulative basis, or $50,955 per year if adjusted only for the year of exoneration.[26] In the former calculation, each year of Clifford's wrongful incarceration is now valued at 77% of the year of someone with a much lesser sentence, and in the latter calculation, at about 90%.

In either case, even though Clifford served a much longer sentence, the cap greatly devalues each year of wrongful incarceration, and arbitrarily reduces the annual value of a year of wrongful incarceration without regard to the severity of the injury due to the length of the sentence. Further, the cap does not bear a rational relationship to the Legislature's stated interest in compensating

[26] These numbers are based on the Bureau of Labor Statistics' CPI-U table, available at https://www.bls.gov/news.release/cpi.t05.htm.

wrongfully incarcerated individuals at a rate of $50,000 per year of wrongful incarceration. These figures and reduction in value do not even take into account the attorney's fees and costs that also are contemplated as within the cap. As such, this Court should find that the cap on compensation for wrongful incarceration, either facially or as-applied, is unconstitutional and strike the portion of §961.06(1)(e) referencing the cap.

III. In Light of *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), the Statute's Requirement that Wrongfully Convicted Individuals Prove Their Innocence by Clear and Convincing Evidence to Recoup Court Costs is Unconstitutional.

The Victims of Wrongful Incarceration Compensation Act provides that once an applicant files a petition and the state responds, the court makes a finding that petitioner "has presented clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense." Fla. Stat. §961.03(3). Once the court makes this finding, it certifies that the petitioner is a wrongfully convicted person and is eligible for compensation. Included in "compensation" is "[t]he amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person." Fla. Stat. § 961.06(1)(c).

Recently, the United States Supreme Court considered whether a state could require a defendant whose criminal conviction has been invalidated in a criminal proceeding to prove his innocence in a separate proceeding by clear and convincing evidence. *Nelson v. Colorado*, 137 S. Ct. 1249, 1252 (2017). It found it could not.

In *Nelson,* the Supreme Court considered Colorado legislation that required an individual to prove his innocence by clear and convincing evidence in order to obtain a refund of costs, fees, and restitution associated with an invalidated conviction. The Court, in finding that the statute violated due process, said:

> Colorado's scheme fails due process measurement because defendants' interest in regaining their funds is high, the risk of erroneous deprivation of those funds under the Exoneration Act is unacceptable, and the State has shown no countervailing interests in retaining the amounts in question. To comport with due process, a State may not impose anything more than minimal procedures on the refund of exactions dependent upon a conviction subsequently invalidated.

Id. at 1257–58. The Court further found that "Colorado may not retain funds taken from Nelson and Madden solely because of their now-invalidated convictions . . . for Colorado may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions." *Id.* at 1256. (Emphasis in original).

As in *Nelson*, Florida requires individuals whose convictions have been invalidated to go through an intentional process and meet an additional burden of proof of innocence in order to recoup court costs and fees. In light of *Nelson*, it is clear that this requirement does not comport with due process. As such, to the extent that §961.03 requires that petitioners prove their innocence by clear and convincing evidence in order to recoup court costs, it is constitutionally invalid.

As the U.S. Supreme Court already has found that requiring a defendant to prove his innocence by clear and convincing evidence in order to obtain a refund of costs, fees, and restitution associated with an invalid conviction violates due process, rather than severing any particular portion of the statute, or striking any portion of the statute, Mr. Williams simply asks this Court to find the "clear and convincing" burden inapplicable to the recoupment of fines, penalties and court costs under §961.06(1)(c), to the extent they exist.

IV. All Invalid Provisions are Severable.

When possible, Florida courts favor severing the invalid portion of a statute while leaving the remainder of the statute intact. "Severability is a judicial doctrine recognizing the obligation of the judiciary to uphold the constitutionality of legislative enactments where it is possible to strike only the unconstitutional portions." *Ray v. Mortham*, 742 So. 2d 1276, 1280 (Fla. 1999).

Even individual sentences or phrases may be severed when it is possible to do so. *Coral Springs St. Sys., Inc. v. City of Sunrise*, 371 F.3d 1320, 1348-49 (11th Cir. 2004).

To determine whether the invalid portions of the statute may be severed, courts use the following four-part test:

> (1) [T]he unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

Cramp v. Bd. of Pub. Instruction of Orange Cty., 137 So. 2d 828, 830 (Fla. 1962). Applying this test then to the clean hands provision and the cap, it is clear those portions may be severed.

a. The Clean Hands Provision is Severable.

Turning to part one of the *Cramp* test, Fla. Stat. § 961.04, "Eligibility for compensation for wrongful incarceration," may be stricken from the remainder of the Act. Further, several sections of §961.03 referencing §961.04 may be stricken.[27] may be stricken. Chapter 961.03(1)(a)(2), which states that a petition must state that a person is not disqualified under §961.04, may also be stricken. The legislative purpose, to compensate those who have been wrongfully incarcerated, is still easily accomplished with the offending provisions removed, and the Act itself remains complete without the clean hands provision. Finally, while the legislature may not have made the political decision to pass the entire Act absent the clean hands provision, substantively, the provision is entirely separable from the Act itself. As such, this provision may be severed.

b. The Cap is Severable.

Fla. Stat. § 961.06(1)(e) states: "The total compensation awarded under paragraphs (a), (c), and (d) may not exceed $2 million. No further award for attorney's fees, lobbying fees, costs, or

[27] A proposed strikethrough of Fla. Stat. §961.03 is attached at Tab C.

other similar expenses shall be made by the state." This is the only reference to the cap in the Act, and it can be easily stricken. As with the clean hands provision, striking this cap does not frustrate the purpose of the Act, nor does it alter the Act's completeness. Finally, substantively, the provision is separable from the remainder of the Act; as such, this provision also is severable.

CONCLUSION

The clean hands provision of the Victims of Wrongful Incarceration Compensation Act, as well as the $2 million cap on that compensation, violates the Equal Protection Clause of Art. 1, § 2 of the Florida Constitution, and the Fourteenth Amendment to the U.S. Constitution, both facially and as applied to Mr. Williams. As such, this Court should strike those provisions from the statute, and find that they are severable. Further, as the U.S. Supreme Court has already invalidated a method similar to Florida's whereby a petitioner whose conviction has been invalidated by the courts must prove his innocence by clear and convincing evidence in order to recoup courts costs and fines, this Court should find that burden inapplicable to his eligibility for recoupment of fines and court costs under Fla. Stat. §961.06(1)(c).

WHEREFORE, the Movant, CLIFFORD WILLIAMS, by and through undersigned counsel, hereby respectfully requests this Court enter an order declaring Fla. Stat. §961.04, portions of Fla. Stat. §961.03, and §961.06(1)(e) unconstitutional.

Respectfully Submitted,

/s/ *Krista A. Dolan*
KRISTA A. DOLAN, ESQ.
Florida Bar No. 1012147
SETH E. MILLER, ESQ.
Florida Bar No. 806471
INNOCENCE PROJECT OF FLORIDA
1100 E. Park Avenue
Tallahassee, Fl 32301
(850) 561-6767
(850) 561-5077 (FAX)

kdolan@floridainnocence.org

/s/ George E. Schulz, Jr.
GEORGE E. SCHULZ, JR., ESQ.
Fla. Bar No.: 169507
HOLLAND & KNIGHT LLP
50 North Laura Street, Suite 3900
Jacksonville, FL 32202
Direct 904.798.5462
Mobile 904.629.2462
Fax 904.358.1872
Buddy.Schulz@hklaw.com

Counsel for Mr. Williams

NOTICE OF CONSTITUTIONAL CHALLENGE

Pursuant to Fla. R. Civ. P. 1.071 and Fla. Stat. § 86.091, Movant hereby gives notice of a constitutional challenge to provisions of Chapter 961, Florida Statutes. The questions raised in the foregoing motion, as well as the accompanying petition for compensation, are as follows:

1. Does the "clean hands provision," Fla. Stat. § 961.04 (2017), violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article 1, §2 of the Florida Constitution, both facially and as applied to Movant Clifford Williams?

2. Does the $2 million cap outlined in Fla. Stat. § 961.06(e) (2017) violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article 1, §2 of the Florida Constitution, both facially and as applied to Movant Clifford Williams?

3. Does the requirement that individuals prove their innocence by clear and convincing evidence, set forth in §961.03, in order to recoup court costs violate the Due Process Clause of the Fourteenth Amendment to the US Constitution as outlined by the U.S. Supreme Court in *Nelson v. Colorado*, 137 S. Ct. 1249 (2017)?

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail, and by registered mail to the following people, this 10th day of June, 2019:

Shelley Thibodeau, Assistant State Attorney
Office of the State Attorney
Conviction Integrity Review Division
Fourth Judicial Circuit
SThibodeau@coj.net

Ashley Moody, Attorney General
Office of the Attorney General
State of Florida
PL-01 The Capitol
Tallahassee, FL 32399-1050
oag.civil.eserve@myfloridalegal.com

/s/ Krista A. Dolan
Krista A. Dolan, Esq.
Counsel for Mr. Williams

TAB A

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA, Plaintiff,	)	
	)	Case No. 76-CF-000912
v.	)	
CLIFFORD WILLIAMS, Defendant-Movant	)	

DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF AND TO VACATE JUDGMENT AND SENTENCE PURSUANT TO FLA. R. CRIM. P. 3.850

Defendant-Movant, CLIFFORD WILLIAMS ("Clifford," "Mr. Williams," or "the Defendant"), by and through undersigned counsel, with the concurrence of the State of Florida, and pursuant to Fla. R. Crim. P. 3.850, moves this Honorable Court to vacate Mr. Williams' conviction and sentence in this case based upon newly discovered evidence, which necessitates Mr. Williams' relief from judgment from the May 2, 1976 murder of Jeanette Williams and attempted murder of Nina Marshall for which he is currently serving a life sentence. On February 25, 2019,[1] the Conviction Integrity Review Division of the Fourth Judicial Circuit State Attorney's Office ("CIR") issued a report and recommendation in Mr. Williams' case noting that "the office has lost faith in the conviction[] of . . . Defendant Williams . . .," and that "[t]here is no credible evidence of guilt, and likewise, there is credible evidence of innocence."[2] This report was a result of Mr. Myers' efforts to have his claims heard. In January 2017, Mr. Myers contacted the State Attorney's Office before the CIR was even officially formed, and requested the unit review his case, which necessarily involved a review of Mr. Williams' case. CIR Report, at 7. This letter began the CIR's review of Mr. Williams' case, which resulted in its recommendation that his

[1] The final version of the report is dated March 26, 2019.
[2] The Conviction Integrity Review Unit Report is attached at Tab A, and will hereinafter be referred to as "CIR Report."

conviction be vacated and that subsequently his charges be dismissed. This newly discovered evidence is such that it would probably produce an acquittal on retrial, *Jones v. State*, 591 So. 2d 911, 915-16 (Fla. 1991), as concluded by the State at the conclusion of its investigation. "A jury presented with the evidence known by the CIR could not conclude, beyond a reasonable doubt, that either defendant committed the shooting and murder." CIR Report, at 40. As a result, this Court should vacate Mr. Williams' convictions and sentences.

REQUIREMENTS OF MOTION TO VACATE JUDGMENT AND SENTENCE MADE PURSUANT TO FLA. R. CRIM. PRO. 3.850

To be facially sufficient, a Motion to Vacate Judgment and Sentence made pursuant to Fla. R. Crim. P. 3.850 must be made under oath and include the following information:

(1) The judgment or sentence under attack and the court which rendered the same;

(2) whether there was an appeal from the judgment or sentence and the disposition thereof;

(3) whether a previous postconviction motion has been filed, and if so, how many;

(4) if a previous motion or motions have been filed, the reason or reasons the claim or claims in the present motion were not raised in the former motion or motions;

(5) the nature of the relief sought; and

(6) a brief statement of the facts (and other conditions) relied on in support of the motion.

Fla. R. Crim. P. 3.850(c)(1)-(6). Defendant addresses requirements (1), (2), (3), (4), and (6) in the Statement of Facts and the Case. Requirement (5) is addressed by the Prayer for Relief. The Motion is made under oath as indicated in the attached Verification. Thus, this Motion is facially sufficient.

PRELIMINARY STATEMENT

The Conviction Integrity Review Division provided undersigned counsel with record materials used in its investigation. One of those materials was the record on appeal consisting of 1,022 pages; that record, however, is not consecutively paginated, rather, the trial transcript

contained within the record is separately paginated. As such, for ease, references to the record within this motion refer to the page number of the PDF of the record on appeal itself, as opposed to the page number on the page of the transcript, and will be cited as "R." followed by the PDF page number.

STATE OF FACTS AND THE CASE

In the early morning hours of May 2, 1976, a shooting occurred at 1550 Morgan St. Apartment #1 in Jacksonville, Florida. As a result, Jeanette Williams (hereinafter "Jeanette") sustained multiple gunshot wounds and died immediately. At the time of the shooting, she was with her lover, Nina Marshall (hereinafter "Nina") sleeping in bed. Ms. Marshall also sustained multiple gunshot wounds, but was able to leave the premises and secure a ride to the hospital. In statements to police, Ms. Marshall identified Clifford Williams (hereinafter "Clifford") and Hubert Nathan Myers (hereinafter "Nathan") as the assailants. Police arrested both Clifford and Nathan, who were among onlookers as emergency personnel arrived at the scene, and charged them with first-degree murder for the death of Jeanette, and attempted first-degree murder for the shooting of Nina. Clifford was tried together with Nathan during a two-day trial on September 1-2, 1976, and Clifford was convicted on both counts and sentenced to death for the murder, and thirty years for the attempted murder, to run consecutively.

State's Case at Trial

At trial, the prosecution relied principally on the testimony of surviving victim Nina Marshall. At the time of the shooting, Nina had been living with Jeanette at 1550 Morgan St., Apartment #1 for about 3-4 months. (R. 378). The apartment had two bedrooms; Jeanette and Nina stayed in one bedroom, and Nathan Myers the other. (R. 380-82). At trial, Nina gave a confusing recitation of her activities in the hours preceding the shooting. She locked the back door at about

8 p.m. after putting out the laundry. (R. 387, 477). Beginning sometime before 11:00 p.m. on May 1, 1976, Nina traveled multiple times from her apartment to the Pik-Up Liquor store to pick up a friend named Laverne. They returned to the apartment where Laverne briefly listened to and borrowed some records, Nina then took Laverne back the Pik-Up Liquor store and returned to the apartment. She then fetched the six-year-old child of Christine Mitchell from a neighbor. The child bathed with Jeanette, then watched a movie in the living room before falling asleep. Nina herself took a bath, then woke up the child and returned her to her grandmother. She returned to the apartment and rolled four marijuana joints, and she completed this sequence of events by smoking 1.5 joints herself while Jeanette smoked two of the joints. (R. 383-87, 446-57). Nina testified that all of these activities occurred in the time period beginning shortly before 11:00 p.m. and finishing no later than 11:30 p.m. because that is when she began watching a movie on television that began at 11:30 p.m. (R. 452, 454). Nina testified that she also locked the front door before going to bed. (R. 387).

Nina was on methadone at the time and fell asleep in bed while watching the movie. (R. 379-80, 458-59). Jeanette was already asleep beside her. (R. 390-91). Their bedroom had one bed with a window behind the bed. (R. 389-90). The bed had a nightstand on the opposite side. *Id.* From the bed, one could see a television on top of a dresser that was situated by the doorway to the bedroom. *Id.* Jeanette slept on the side of the bed next to the window, while Nina slept on her right side (facing away from the window) on the side of the bed next to the nightstand, closer to the door. (R. 388-89, 403). The window next to the bed had curtains that were closed. (R. 302, 387-88).

Nina testified that she woke up when she heard a clicking sound she thought came from the front door. (R. 391). She thought nothing of it and went back to sleep. *Id.* Nina then woke up

with a burning sensation in her neck. (R. 391). She sat up in the bed and saw two people in the room standing each on one side of the television. (R. 391-92). She testified that Jeanette woke up grabbing the back of her gown and that she was falling out of the bed between the bed and the nightstand. (R. 391-92, 416-17). One of Nina's legs was on the bed and the other was on the floor. (R. 416-17). Her head and neck were on the nightstand while her neck was bleeding. *Id.* Jeanette didn't say anything else and Nina fell on the floor as the two men kept shooting. (R. 391). The perpetrators never said anything, and all she heard was an unspecified number of popping sounds, like a firecracker. (R. 391-92).

After she fell on the floor, Nina testified that "they just kept shooting" her as she was trying to get back on the bed. (R. 393). She was shot again and fell to her knees on the floor. (R. 420). As she lay on the floor in the middle of the room, she heard the gun click and the two perpetrators stepped over her and went to the bedroom door going to the living room. (R. 393-94). She laid on the floor until she heard the front door lock. (R. 393-94, 420).

She then got up, left the apartment through the front door and went next door to get help, but only children were there. (R. 393-94). As she made her way to the road in front of the building, she allegedly saw Clifford and Nathan walking on the road, so she laid on the ground until they left and flagged down a car who then took her to the hospital. (R. 394).

Harold Torrence drove this car. (R. 525). He testified that he was driving by himself on Morgan Street when he saw a woman come out of a building, fall down and get back up, and flag him down at around 1:45 a.m. (R. 525, 534). She opened the door and when she got in, she told Torrence that "Baldie" (a nickname for Jeanette) was dead. (R. 531-32). Torrence asked Nina who did it, but she did not tell him. (R. 533). Torrence then took Nina to the hospital. (R. 525). During

this time, Torrence did not see any men walking up the street (R. 530, 533), and nothing blocked his vision. (R. 536). They arrived at the hospital at 2:07 a.m. CIR Report, at 8.

While in the emergency room, Nina communicated to a police officer that she had been shot by "Clifford Williams" and "Nathan" and asked that someone check on Jeanette. *Id*. Specifically, she got a pencil and paper from an unknown person and scribbled the names of Clifford Williams, Nathan Myers and Jeanette Williams and the address of 1550 Morgan St. among three separate notes, without any additional information. (R. 403); *see also* Nina Marshall Hospital Notes, attached at Tab B.

Jacksonville Sheriff's Office patrolman John A. Zipperer arrived at the scene at 2:30 a.m. (R. 248-49). Upon entering the apartment, he observed bloody footprints coming from the apartment. (R. 249). He went through the front door and followed the bloody footprints to a rear bedroom where a black female was lying in the bed apparently dead. (R. 250). He noted that the light in the living room and the bedroom television were on. (R. 251). Zipperer used a flashlight because the blood was not visible without it, and he was wanted to avoid stepping in it. (R. 258-59).

Lead Investigator Richard C. Bowen, of the Jacksonville Sheriff's Office, arrived next at 2:45 a.m. on May 2, 1976. (R. 276-77). Upon entering the apartment, he also saw a trail of blood leading out of the northeast bedroom to the front door of the apartment onto a concrete patio. (R. 278). When he entered the northeast bedroom, he too found a black female lying on the bed who appeared to be dead. (R. 278). Bowen noted that the street light directly across the street from the apartment was on, and that inside the apartment, a hanging lamp giving off a reddish glow in the living room and the television in the bedroom were on. (R. 279-80, 281, 301-02). While both

Zipperer and Bowen said the television was on, Zipperer indicated that it was showing a movie, while Bowen indicated it was just showing snow or fuzz. (R. 255-56, 295).

A crowd gathered at the scene and Clifford and Nathan were part of the crowd. CIR Report, at 9. Nathan was asked by law enforcement to identify the body and made a positive identification of Jeanette at the scene. *See* Office of Medical Examiner Record of Identification of Body (May 2, 1976), attached at Tab C. Nathan then returned to the crowd. At 3:00 a.m., police entered this crowd and arrested Clifford, and shortly thereafter arrested Nathan, based on Nina's identification in the hospital. CIR Report, at 9.

Dr. Sam E. Stephenson, Jr., was the Chief of Surgery at University Hospital and supervised Nina's surgery. (R. 540-41). He testified that Nina had two definitive gunshot wounds, and one possible gunshot wound. (R. 541). She had a through and through wound that entered just below the left cavity on the left side and blew out the anterior part of the neck at about thyroid level. (R. 541-42). She had a second through and through wound from the neck that entered from the left side across her voice box and exited through the right side. *Id.* A third wound was in her left forearm which was the only bullet still in her body. *Id.*

Dr. Peter Lipkovic was the Chief Medical Examiner for the Fourth Judicial Circuit and performed the autopsy on Jeanette. (R. 545, 547). He determined the cause of death to be a gunshot wound to the head, although Jeanette had four total gunshot wounds. (R. 548). The fatal gunshot wound entered the exact midline of the base of the skull or upper neck, then proceeded upward winding up in the midline of the forehead. *Id.* It took a back to front, upward course. *Id.* The second wound was in her left upper arm underneath the tip of the shoulder, and the shot proceeded in an upward direction. (R. 548-49). Dr. Lipkovic recovered a deformed .38 caliber projectile from the shoulder joint next to the bone. *Id.* The third gunshot wound was immediately underneath the

second gunshot wound, at approximately the midpoint between the elbow and shoulder, and it proceeded from the outside of the left upper arm to the inside of the left upper arm, then exited. *Id.* He did not recover the bullet from the body. *Id.* The fourth gunshot wound went in underneath the left elbow from the outside of the lower arm to the inside of the lower arm. It struck the bone and split into fragments. Smaller fragments went underneath the skin, leaving visible blackening around the area. (R. 549-50). The larger fragment continued on a straight course after fracturing the bone and exited on the inside of the lower arm. *Id.* The fragment was also from a .38 caliber bullet. (R. 550). Dr. Lipkovic opined that the fatal head wound would have caused Jeanette to lose consciousness and die immediately, such that she would have had no purposeful movement following that shot. (R. 550). He found an additional .32 caliber bullet in Jeanette's left upper arm, but it was completely enveloped in body tissue, suggesting that it was at least 2-3 months old or older, demonstrating that it was unrelated to the instant crime. (R. 554, 556-57).

At trial, Nina identified Clifford Williams and Nathan Myers as the persons standing next to the television. (R. 392-93). She testified that she saw Myers and Williams three times during the incident: (1) when she sat up in bed while they were shooting at her, (2) when she laid on the floor and they stepped over her and looked back at her, and (3) outside the apartment building before she got a ride to the hospital. (R. 393-94, 410, 420-21). She stated that she had no question in her mind that Nathan and Clifford were the two perpetrators.

The Defense Case

Clifford's counsel put on one witness—recalling Investigator Bowen. Bowen testified that he collected clothes and shoes from both Williams and Myers shortly after arrest at 4:45 a.m. on May 2, 1976 and did not find any blood on those items. (R. 628-29). He also stated that at 5:45 a.m. he ordered the swabbing of both Williams' and Myers' hands and sent the samples to the

laboratory for a gunshot residue test. (R. 630-32). Neither defendant presented any evidence of the results of this gunshot residue analysis.

Clifford's defense counsel waived his opening statement and aside from calling Detective Bowen, he, along with Nathan's counsel, relied on a clearly ineffectual strategy of merely cross-examining the State's witnesses. Their cross examination of Nina largely focused on the following areas:

- Her drug use before the incident (R. 445);
- Possible other people who could have had keys to the apartment (R. 463);
- When she heard the clicking noise in the door, she made an assumption that it was Clifford and Nathan (R. 463-64);
- Inconsistency between her pretrial statement that when she first saw the perpetrators she was lying across Baldie on the bed (R. 464-65) and her trial testimony in which she stated she sat up and saw the perpetrators;
- Inconsistency between her pretrial statement that she only fell off the bed once and her trial testimony that she fell off the bed three times;
- The fact that there was no blood on the nightstand and the nightstand did not look disturbed, despite her testimony that she fell between the bed and nightstand and her bleeding neck was on the nightstand;
- Her inability to see the perpetrators' faces based on her testimony that she saw sparks and was dodging bullets (R. 467-70);
- That the shooting sounded like a cap pistol and did not sound very loud (R. 470-71);
- Inconsistency between her pretrial statement that she only saw one perpetrator step over her and did not know which one, and her trial testimony that both perpetrators stepped

over her and that she looked up and saw that it was Clifford and Nathan (R. 471-73, 479-80); and

- Discrepancy between where Nina said she saw Myers and Williams outside the building and where Harold Torrence says he first saw Nina, which was in location where it would be impossible to see Myers and Williams based on Nina's testimony as to their location; (R. 724-25)

In his closing, Clifford's defense counsel used these inconsistencies and other impeachment, as well as the fact that Nina was under the influence, to urge the jury to find that Nina's senses were dulled and that she lacked credibility. (R. 757-61). Further, despite presenting no exculpatory evidence, defense counsel argued that Nina's testimony was not consistent with the physical evidence. (R. 761).

Clifford's counsel chose to waive his opening statement and only presented Detective Bowen as a witness. While Nathan's counsel chose not to present any witnesses to preserve his ability to give both the first and last closing argument, (R. 593), a clearly unreasonable strategy, it is unclear what Clifford's counsel's strategy was in failing to call any additional witnesses, particularly in light of all the available exculpatory physical evidence. Specifically, counsel had available to them:

- Physical evidence indicating holes in both the bedroom window screen and curtain; a July 1976 FDLE ballistics report indicating that only six .38 caliber bullets were collected from the victims and the scene, and that all six bullets were fired from the same gun; and an ATF gunshot residue report that found no such residue on Clifford or Nathan. Combined, this evidence demonstrated only one gun was used in the crime, undercut the State's multiple shooter from inside the bedroom theory and impeached

Nina's testimony, supported an uninvestigated defense theory that a single shooter shot the victims from outside the bedroom window, and tended to demonstrate that Clifford and Nathan did not fire a gun; FDLE Report, attached at Tab D, and ATF Report, attached at Tab E; and

- More than 40 alibi witnesses, many of whom were friends with the victims and had reason to want to help punish the perpetrators of this murder, who consistently stated that they were at a party a few buildings away from the shooting. When they heard the gunshots, both Clifford and Nathan were at the party.

The Conviction and Sentence

The jury began its deliberation at 8:10 p.m. on September 2, 1976 and returned with a verdict at 10:47 p.m. (R. 859-60). The jury found Clifford guilty of first-degree murder (Count I) and attempted first-degree murder (Count II). (R. 862). On September 7, 1976, after the state sought the death penalty, the jury rendered an advisory verdict of life imprisonment on Count I. (R. 967). On October 27, 1976, this Court overrode the jury's recommendation and imposed a sentence of death for Count I and 30 years imprisonment for Count II, to run consecutively. (R. 997-99). On direct appeal, the Florida Supreme Court affirmed the convictions, but remanded for resentencing on the first-degree murder conviction, finding that record did not support the judge's imposition of the death penalty. *Williams v. State*, 386 So. 2d 538 (Fla. 1980). Subsequently, Mr. Williams was sentenced to life without the possibility of parole for 25 years.

Postconviction Efforts

In 1982, Clifford filed a motion for post-conviction relief that was denied two weeks later. In 1997, Clifford filed a second motion for post-conviction relief arguing that he was innocent of the charges. In support, Clifford argued, among other things, that that he had never seen the

written statement made by Christopher Snype stating that Tony Gordon had seen a man at the window. That motion was denied without a hearing on January 8, 1998. A motion for rehearing and notice of appeal were both denied.

In 2012, Clifford filed a *pro se* motion to reopen his case, arguing ineffective assistance of counsel for counsel's failure to determine his competency to stand trial or request a psychiatric examination. Clifford appealed the denial of this motion, and filed writs to the Florida Supreme Court, all of which were denied.

In 2015, Clifford filed an additional *pro se* motion to vacate his judgment and sentence, which was subsequently denied.

Conviction Integrity Review

A. <u>The Fourth Judicial Circuit State Attorney's Role in Conviction Integrity</u>

It is axiomatic that when an innocent person is convicted, the true perpetrator remains free of accountability and at liberty to commit additional crimes that threaten public safety. Prosecutors, as members of the Florida Bar, are governed by the Rules of Professional Conduct, which provide that prosecutors have an ongoing obligation to act upon "new, credible and material evidence" that creates a reasonable likelihood that a convicted defendant did not commit the offense for which he was convicted. Thus, prosecutors have a unique obligation, both ethically and as officers of the court, to act on evidence of innocence, whenever it avails itself, to ensure that no factually innocent person remains wrongfully convicted. It is on this backdrop that State Attorney Melissa Nelson created the Conviction Integrity Review ("CIR") division of the State Attorney's Office in January 2018 to review credible information suggesting that prior convictions may not be correct. *See* CIR Report, at 5.

The CIR is tasked with investigating and resolving claims of actual innocence arising out of felony convictions in the Fourth Judicial Circuit that are capable of being substantiated by credible, factual information or evidence previously not considered by the original finder of fact. The CIR defines evidence of actual innocence as that which demonstrates a "reasonable and probable likelihood that the [defendant] did not participate in or commit the crime." *Id.* at 5. If a defendant petitions the CIR for a review of his case and it meets the criteria for acceptance, the CIR initiates an investigation. *Id.* at 6. This investigation can include, but is not limited to, review of all available and relevant agency files; trial, appellate and postconviction pleadings and materials; conducting witness interviews and obtaining sworn statements; and testing or reexamination of physical evidence. *Id.*

Once the CIR concludes this independent investigation, it issues a report and recommendation to an Independent Audit Board comprised of five members of the community to determine whether the recommendation is supported by the substance of the investigation. Ultimately, the State Attorney has exclusive authority to make a final decision on how her office concludes the matter. *Id.* The CIR has multiple options for its recommendation. It may conclude that its reinvestigation does not support the claim of innocence. Alternatively, the CIR's reinvestigation may indicate credible evidence that either exonerates the defendant or shows that the conviction is infirm and unreliable. In that instance, the State Attorney's office may initiate, join, or not oppose a motion for postconviction relief. *Id.* at 6.

B. <u>The CIR Investigation of Clifford Williams' Case</u>

On January 17, 2017, after seeing a news article about State Attorney Melissa Nelson's interest in creating a conviction integrity unit, Nathan Myers sent a letter to the State Attorney's Office claiming his innocence, requesting assistance and detailing known evidence that supported

the assertion. *Id.* at 4. Once the CIR was created in January 2018, it accepted his case for review and engaged in a comprehensive and thorough review of the case, which necessarily involved a review of the case against Clifford Williams, since they were co-defendants. *Id.* Its investigation yielded key evidence leading to three factual conclusions: (1) available and new evidence not only contradicted the State's two shooters inside the apartment theory, and star witness Nina Marshall's trial testimony, but actually supported the theory that the shooting was perpetrated by a single shooter from outside the bedroom window; (2) it confirmed that another man, Nathaniel Lawson, confessed to a number of people that he committed the shooting by himself, and that Lawson was present at the scene at the time of the shooting, and (3) it also confirmed multiple alibi witnesses who recalled being with both Nathan and Clifford at a nearby party at the same time they heard the shots fired during the crime, demonstrating the innocence of both defendants. CIR Report, at 2-5. The CIR Report also concluded that the certain material items of evidence that would have supported the single shooter at the window theory were apparently not disclosed in discovery, and that defense counsel was constitutionally ineffective for failing to use available evidence to debunk the unsubstantiated two shooter in the bedroom theory and present exculpatory alibi evidence. *Id.* at 6, 30, 42, 43.

i. The State's Two Shooters Inside the Apartment Theory Is Not Supported By the Physical Evidence in the Case.

At trial, the State presented a theory, exclusively through the testimony of victim Nina Marshall, that two individuals committed this crime, shooting the victims from inside the apartment bedroom. Yet, the CIR investigation, including a review of evidence available at the time of trial and new evidence produced as part of the CIR investigation, revealed that this "two shooters in the apartment" theory was not supported by the physical evidence in the case. The CIR relied on the following evidence for this conclusion:

1. Ballistics

A total of six .38 caliber bullets were recovered from the bodies of the victims and the scene and FDLE concluded in a July 5, 1976 report that all six bullets came from the same gun, a .38 caliber revolver. CIR Report, at 10-11; FDLE Report. The CIR consulted with Peter Lardizabal, a retired FDLE firearms and toolmark analyst and current JSO employee, who reviewed the FDLE report in the case and agreed that there was no evidence to suggest that more than one firearm was used. CIR Report, at 28. These findings contradict Nina's testimony that two men were shooting guns with two muzzles flashing and that they emptied their weapons. *Id.* at 27-28.

2. Eyewitness Account of a Single Shooter Outside the Apartment Window

In addition to physical evidence in the case demonstrating that the crime was likely committed by a single shooter, law enforcement had evidence prior to the 1976 trial to indicate that the shooting came from outside, rather than inside the apartment. Christopher Snype told police that his neighbor, Tony Gordon (who lived directly across the street from the victims' apartment), had a conversation with him and his friend Major Skylark within hours of the shooting. During that discussion, Gordon told Snype and Skylark that he heard the shots fired, looked out his window, and saw a black man in black clothing standing outside the apartment window firing shots. CIR Report, at 29. The police followed this investigative lead and subsequently interviewed Tony Gordon, who denied witnessing the shooting but then failed a polygraph on the matter. *Id.* While Gordon denied witnessing the shooting during the CIR's two interviews with him during its investigation, he did admit the victim's apartment window was broken the night of the shooting, and he acknowledged seeing Christopher Snype the night of the shooting. *Id.* Gordon also indicated that "all the people at the party were saying . . . Myers and Williams were with them at

the party at the time they heard the shots." *Id.* at 30. Harold Torrence, the man who drove Nina to the hospital, returned to the scene at around 4:00 a.m. on May 2, 1976. In his deposition testimony, he corroborated Snype's account when he stated that "there was one dude who said he saw the whole thing . . . the shots and all. He say [sic] he saw her but he say he was outside the window and the girl said it was inside." *Id.* at 30; Torrence Depo., at 11.

While the defense never questioned Torrence or any law enforcement witnesses about this at the trial, it appears the prosecution did not list Christopher Snype or Major Skylark as witnesses, nor did it disclose Christopher Snype's written statement or the fact that Gordon failed a polygraph in pre-trial discovery. CIR Report, at 11. Thus, the defense was left only with knowledge of Gordon, who denied seeing anything, and did not have the information necessary to investigate whether he saw a single shooter, or, at least impeach Gordon. This was a violation of both defendants' due process rights.

3. Additional Physical Evidence and Forensic Analysis Indicating A Single Shooter From Outside the Apartment Window

The CIR's review of the physical evidence suggests both the wound paths and victim positioning were indicative of the bullets originating from outside the window. None of the entrance wounds are on the front side of the victims, the side that would have been facing a shooter who was inside the bedroom. CIR Report, at 32. Based on the position of Jeanette's body on the bed, it appeared she was trying to move away from the window, which is a more reasonable conclusion than her moving toward a shooter inside the bedroom. *Id.* The bullet fragment found in Nina's body had to have struck an intervening object to result in that fragmentation, and there were no such objects observed in the photographs of the scene from the direction where Nina alleged the perpetrators were shooting from inside the bedroom. *Id.* at 33. Moreover, the entrance wound associated with the bullet that lodged in Jeanette's shoulder joint was irregular and not circular,

consistent with it striking another object, like aluminum screen, glass, or the window frame, before entering her arm. *Id.* Lastly, computer modeling by a retained expert demonstrated the bullet path from Jeanette's head wound tracked back to the bedroom window where the hole was present in the screen and window. *Id.*

Law enforcement observed that the mesh edges of the aforementioned hole in the bottom right corner of the aluminum window screen were pointing inward, toward the bedroom. CIR Report, at 34. Moreover, a large piece of glass behind the hole in the screen was missing and there was glass on the victims' bed. *Id.* The CIR retained a crime scene reconstruction expert who test fired .38 caliber bullets through an aluminum metal screen exemplar and was able to replicate the damage to the screen by firing six shots with a .38 caliber revolver at contact range. *Id.* Taken together, the CIR was able to demonstrate that objects traveled from outside, through the screen and window, to the inside of the bedroom, and those objects likely were bullets. *Id.*

The CIR determined that, because of the small size of the room and the location and large size of the pool of blood on the bedroom floor, Nina would have been partially blocking the doorway, which would have made it difficult to step over her without stepping in and tracking blood. CIR Report, at 35. Moreover, the small size of the room suggests that if the shooters were in the room at the foot of the bed, the victims would have been shot at close range. However, there was no evidence of a close-range shooting, such as powder burns or stippling on the victims, their clothing, or the bed sheets. *Id.* at 32. The CIR concluded that these facts undercut Nina's version of events indicating two shooters in the bedroom and bolster the evidence that the shooting originated from outside the bedroom window.

The CIR arranged for its crime scene reconstruction expert to perform a sound experiment. The expert set up audio recording equipment in the apartment where Rachael Jones' party occurred

in 1976. CIR Report, at 35-36. They then test fired two shots from a .38 caliber revolver inside the precise bedroom where Nina and Jeanette were sleeping, and two additional shots from outside the bedroom window. *Id.* This test showed that when the shots were fired inside the bedroom, they were faint and barely discernable from Rachael Jones' former apartment, likely even less so if a loud party was happening. *Id.* at 36. Conversely, when shots were fired from outside the bedroom window, they could be heard quite clearly from Rachael Jones' former apartment, making it likely that the party-goers would have been able to hear them. *Id.* The CIR concluded that this test corroborated the accounts of the alibi witnesses who heard shots while at the party, contradicted Nina's allegation that the shots were fired by shooters inside the bedroom, and supported the conclusion that the shots were fired from outside the bedroom window. *Id.*

In the aggregate, the CIR concluded there is no evidence, other than Nina's testimony, to support the shooting from inside the bedroom, and that the physical evidence indicates otherwise. CIR Report, at 31. In fact, law enforcement originally viewed the physical evidence as supporting the theory that the shots were fired from outside the window, but abandoned that theory and ignored the physical evidence once Nina gave her statement identifying Nathan and Clifford as the shooters from inside the bedroom. CIR Report, at 31. The CIR concluded that the evidence demonstrates that Nina's description of the events was simply inaccurate. *Id.* at 37. Nina herself indicated to Henry Curtis that she did not know who shot her because she was asleep. *Id.* at 30-31. The only parts of her testimony that can be substantiated are that she was shot, and that the television in the bedroom was on. *Id.* at 27. Thus, the CIR discounted her testimony, the only testimony linking Clifford and Nathan to this crime, when concluding that these convictions should be vacated.

ii. Nathaniel Lawson Confessed to the Shooting and Was at the Scene of the Crime that Night.

With his petition to the CIR, Nathan attached an affidavit, attached at Tab F, executed by a Tony Brown indicating that another man, Nathaniel Lawson, confessed to the murder in this case. Through subsequent investigation, the CIR located and interviewed Tony Brown, Leatrice Carter, James Stepps, and Frank Williams, all of whom had information related to Nathaniel Lawson's connection to the instant murder. CIR Report, at 19-20.

Tony Brown told the CIR that in 1993, he was at bar on Pearl Street when he was approached by Nathaniel Lawson who told him that Clifford and Nathan were serving time for a shooting he committed. Lawson indicated that Albert Young, a known heroin dealer, paid him to shoot Nina because she owed Young money for drugs. *Id.* at 20. Lawson continued that he left the area of the crime with Rico Rivers. *Id.* at 20-21. Brown indicated that Lawson had a reputation for being dangerous and he revealed this information only after he learned of Lawson's death. *Id.* at 21.

Leatrice Carter spoke with Lawson in the 1990s but before 1995 at a beer and wine bar she and her husband owned. *Id.* Lawson told her that Clifford was in prison for nothing because he didn't do it, he (Lawson) committed the crime, and that Clifford's brother and sister—Nathan's uncle and mother—were mad at him. *Id.* She had heard that Nathan and Clifford had been arrested, but the word around the neighborhood was that they were not guilty of the shooting. *Id.* She told the CIR that she informed Ron Stansell about her conversation with Lawson at the time it happened, and Stansell confirmed this. *Id.*

Frank Williams ("Frank") is Clifford's brother and Nathan's uncle. He had heard that Lawson might have been involved in the shooting, so he confronted Lawson at a bar near the Dew Drop on Jefferson Street. He demanded Lawson tell him what happened, but Lawson told Frank that he was "staying out of it," and refused to speak with him further. CIR Report, at 22. Frank

dated Lawson's sister who later told him that Lawson was sick and might want to clear his conscience. Frank arranged a meeting with Lawson in public, where Lawson told Frank that he (Lawson) was the shooter and that the woman "was stealing from me and I had to send a message." *Id.* at 23. Lawson said there was nothing he could do but could send Nathan and Clifford money, and that he had given Nathan's mother Dot money for them. *Id.* Dot confirmed to Frank receipt of this money, and that she sent it to Nathan and Clifford in prison. *Id.* Frank told the CIR that he did not come forward because he thought authorities would not believe him, and he hoped Lawson would come forward on his own. Not long after this conversation, Lawson passed. *Id.*

James Stepps was a long-time friend of Nathaniel Lawson and visited with Lawson before he died. During the conversation, Lawson told Stepps he had killed the woman that Clifford was in prison for. *Id.* at 24. Lawson said, "what can I do? I can't turn myself in." Stepps said that because he felt Lawson told him this in confidence, he would not have come forward if Lawson were still alive. *Id.* Although they were friends, he knew Lawson to be a violent person. *Id.*

While these witnesses relayed admissions by Lawson, the CIR went further in its investigation and found independent evidence from the original 1976 investigation tying Lawson to the scene of the crime on the evening of the murder. In the general offense report, there is a notation that law enforcement observed a white pickup truck leaving the scene at the same time Nathan and Clifford were being transported after being arrested. CIR Report, at 24. Police stopped the vehicle and two black females and two black males were inside. The general offense report identified the driver as Barbara Williams, Clifford's wife, and one of the black males as Rico Rivers. The other two individuals were unidentified at that time. *Id.* In Barbara Williams' 1976 deposition, she testified under oath that around 4:00 a.m. she left the area with "Rosetta Simmon

(Cookie), Raymond (Rico Rivers), and Nathan Lawson." *Id.* at 25; Barbara Williams Depo., at 40. In the CIR's interview with Tony Brown, he confirmed that Lawson told him he left the scene with Rico Rivers, corroborating Barbara Williams' deposition testimony and the general offense report. CIR Report, at 25. Thus, Nathaniel Lawson not only credibly confessed to a number of credible witnesses, but independent evidence obtained in 1976 as part of the original criminal investigation and prosecution show him leaving the scene of the crime shortly after it occurred.

iii. More Than 40 Witnesses Were Prepared to Testify that Nathan Myers was at a Nearby Party During the Shooting and the Remaining Living Witnesses Confirmed His Whereabouts.

After the shooting, both Clifford and Nathan were among a large group of onlookers from a nearby birthday party for Rachael Jones that had gathered outside 1550 Morgan Street as emergency personnel arrived at the scene of the shooting. *See* General Offense Report, at 4. Nathan was asked to identify Jeanette's body and he appeared to be upset after seeing her dead. *Id.* at 5; O'Bryant Depo., at 34. That night, police spoke with Rachael Jones and confirmed that Nathan and Clifford were indeed at the party. After his arrest, Detective Bradley interviewed Nathan who said, "I don't have nothing to worry about, I didn't shoot her." He also told police he had been at the party during the shooting. Bradley Depo., at 33-34.

By the time of trial, counsel for Nathan Myers had filed a Notice of Intent to Claim Alibi and listed 45 potential alibi witnesses. (R. 20-21). Some were interviewed[3] by police within proximity to the murder, three of whom were deposed by the state—including Barbara Williams, Rico Rivera, and Virginia Wilkinson. CIR Report, at 11-14. Others were neither interviewed nor deposed. CIR Report, at 11. The statements available at the time of trial were largely consistent

[3] The following individuals were interviewed in 1976 as part of the pre-trial criminal investigation: Nellie Mae Anderson, Dorothy Benson, Kay Frances Brown, Pauline Dawson, Joann Fleming, Ethel Howard, Rachael Jones, Ella Ruth Maddox, Carolyn McDaniels, Raymond Rico Rivers, Rosa Lee Royster, Vanessa Snype, Deborah White, Virginia Wilkerson, and Barbara Williams. *See* CIR Report, at 12, n. 15.

and exculpatory: A large group of friends gathered at Rachael Jones' apartment, which was on the same block as Jeannette and Nina's apartment, to celebrate her birthday. Clifford and Nathan arrived at the party sometime after 1:00 a.m., with Clifford's pregnant wife Barbara Williams, Rico Rivers, and another woman named "Cookie." *Id.* These witnesses recalled Nathan and Clifford getting a plate of food from the kitchen, and Barbara Williams sitting in the kitchen. They were also consistent in hearing multiple gunshots, remembering Clifford going out on the porch to see what happened before coming back in, and recalling that Nathan was sitting eating in the living room at the time the shots were fired. *Id.* at 11-12. Everyone who was interviewed described the shots as very loud, and no one interviewed saw Clifford or Nathan leave the party before hearing the shot. *Id.* at 12. All the partygoers, including Clifford and Nathan, then went down the block to see what happened, when they realized police had arrived at 1550 Morgan St. *Id.*

As part of its reinvestigation of the case, the CIR interviewed remaining alibi witnesses who were alive and who it could locate. Specifically, the CIR interviewed a number of witnesses,[4] most of whom remembered that Clifford and Nathan were at the party, but were hesitant to rely on their memories more than 40 years after the crime. *Id.* at 17. The CIR included in its report summaries of interviews of Joann Fleming, Vincent Williams, and Geraldine Prey. Joann Fleming was a neighbor of Rachael Jones and had a clear recollection of seeing Clifford at the party when the shots rang out and was unequivocal that he was not the shooter. CIR Report, at 17. She was less clear about Nathan's activities at the party, but her statements close in time to the murder

[4] Of the original alibi witnesses listed by the defense, the CIR located: Dorothy Benson, Kay Frances Brown, Belinda Bryant, Pauline Dawson, Joann Fleming, Ella Ruth Mattox, Rico Rivers, Vanessa Snype, Deborah White, and Vincent Williams. It could not interview Rico Rivers because he suffers from dementia. Additionally, the CIR could not locate Barbara Williams, Clifford's wife, because she is homeless. All other alibi witnesses could not be located or were confirmed deceased. CIR Report, at 12, 17.

indicate that she saw Nathan at the party, and that he went outside to the porch with Clifford to check on the source of the shooting. *Id.* at 12.

Vincent Williams was a cousin to both Nathan and Clifford. When he arrived at the party that night he saw Clifford in the kitchen, and Nathan eating in the living room. CIR Report, at 18. When he heard shots fired, he saw Clifford walk out the front door, look outside, and then come back in. *Id.* He told the CIR he relayed this information to Clifford's attorney, but was never called as a witness in the case. *Id.*

Geraldine Prey was dating Nathan at the time of the crime and was not present at the party. But she spoke to a number of people, including Virginia Wilkinson, Rachael Jones, and Francis Brown, who indicated that Nathan and Clifford were at the party when the shots rang out and that "everyone" knew they were not the shooters. *Id.* at 18-19.

The CIR concluded that the alibi evidence was credible based the consistency of the alibi witnesses that Nathan and Clifford were at the party when the shots rang out, the accuracy with which they described the layout of Rachael Jones' apartment, as well as that none of the witnesses were threatened or incentivized to provide their statements, most were friends with Jeanette and had an interest in seeing her killer held accountable. *Id.* at 17-18.

C. <u>The CIR Determination of Entitlement to Relief</u>

The evidence reviewed and developed in the investigation described *supra*, led the CIR to a number of significant conclusions:

- "A jury presented with the evidence known by the CIR could not conclude, beyond a reasonable doubt, that either defendant committed the shooting and murder." *Id.* at 40.
- "These men would not be convicted by a jury in 2019 if the jury were presented with all the exculpatory evidence." *Id.* at 44.

- "There is no credible evidence of guilt, and likewise, there credible evidence of innocence." *Id.*

Based on these legal conclusions, the CIR recommended that both Clifford's and Nathan's convictions and sentences be vacated, and that all charges against them be dismissed. *Id.* at 44. The CIR presented these investigative findings and legal conclusions to the Independent Audit Board ("IAB") and the IAB unanimously found that:

> [T]here is not sufficient evidence of guilt to support the Defendants' convictions. Additionally, although there is no definitive proof, such as DNA evidence, the panel agreed that there was sufficient credible evidence to support a finding that the defendants are, in fact, probably innocent of the charges.

CIR Report, at 43.

On February 25, 2019, the CIR disclosed its Report to undersigned counsel, who thereafter filed a Notice of Appearance in this Court. This Report and certain contents within the Report qualify as the newly discovered evidence upon which Mr. Williams predicates this timely-filed Motion for Postconviction Relief.

SUMMARY OF ARGUMENT

On February 25, 2019,[5] the Conviction Integrity Review Division of the State Attorney's Office, Fourth Judicial Circuit ("CIR") issued a report detailing its reopening and reinvestigation of the 1976 murder of Jeanette Williams and attempted murder of Nina Marshall. The report not only discredited the State's trial theory, but set forth detailed evidence of the innocence of both Clifford Williams and Nathan Myers,[6] including summaries of statements by multiple alibi witnesses and multiple confessions to the murder by another man who the original criminal investigation tied to the crime scene.

[5] As mentioned *supra*, the final version of the report, dated March 26, 2019, is the attached version.
[6] Mr. Myers, through separate counsel, is filing his own, mostly identical Motion for Post-conviction relief pursuant to Fla. R. Crim. P. 3.850.

While some of the information contained within the report had previously existed and been referenced in prior post-conviction motions, some of it was based on new testing of evidence, including a crime scene reconstruction report, sound experiments, and additional witness interviews. Further, the CIR report itself, as well as the conclusions and recommendation contained with the report, constitute newly discovered evidence providing a basis for relief.

This newly discovered evidence creates a reasonable doubt about Clifford's guilt. Had this evidence been available at the time of his trial, a jury probably would have acquitted. *Jones v. State*, 591 So. 2d 911, 915-16 (Fla. 1991). As a result, this Court must vacate Clifford's conviction and sentence. In addition to the newly discovered evidence, this Court must consider all evidence that could be presented at a new trial. *Hildwin v. State*, 141 So. 3d 1178, 1187-88 (Fla. 2014). Aside from the new information within the CIR report, that information must be considered in light of the existing evidence, including statements from multiple alibi witnesses, which were never presented at trial.

ARGUMENT

II. WHEN VIEWED IN LIGHT OF THE ALL EVIDENCE ADMISSIBLE AT A NEW TRIAL, THE NEWLY DISCOVERED EVIDENCE OF THE CONVICTION INTEGRITY REVIEW DIVISION REPORT CREATES A REASONABLE DOUBT AS TO MR. WILLIAMS' GUILT. SUCH EVIDENCE IS PRESENTED TO THE COURT IN A TIMELY MANNER AND PROBABLY WOULD PRODUCE AN ACQUITTAL ON RETRIAL.

In order to obtain relief based on a claim of newly discovered evidence, a defendant must demonstrate new facts (1) that were "unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known them by the use of diligence," and (2) that if considered by the jury are "of such a nature that it would probably produce an acquittal on retrial." *Jones v. State*, 591 So. 2d 911, 915-16 (Fla. 1991). In making this determination, this Court "must consider the effect of the newly discovered evidence, in addition

to all of the admissible evidence that could be introduced at a new trial," so there is a "total picture" considering "all the circumstances of the case." *Hildwin v. State*, 141 So. 3d 1178, 1187-88 (Fla. 2014) (citing *Swafford v. State*, 125 So. 3d 760, 775–76 (Fla. 2013)) (emphasis added).

As the Supreme Court of Florida explained, the *Jones* materiality standard is met when the newly discovered evidence "weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability." *Williamson v. State*, 961 So.2d. 229 (Fla. 2007) (internal quotations omitted). A postconviction court must even consider testimony previously excluded as procedurally barred or presented in another postconviction proceeding in determining if there is a probability of an acquittal. *Swafford v. State*, 125 So. 3d 760, 775-76 (Fla. 2013). "In evaluating the legal sufficiency of a motion based on newly discovered evidence, the court must accept the allegations as true for the purpose of determining whether the alleged facts, if true, would 'render the judgment vulnerable to collateral attack.'" *Nordello v. State*, 93 So. 3d 178, 184 (Fla. 2012) (citations omitted). The determination of facial sufficiency "rest[s] upon an examination of the face, or contents, of the postconviction motion." *Id.* at 185 (quoting *Spera v. State*, 971 So. 2d 754, 758 (Fla. 2007)).

A. <u>CIR Report</u>

Conviction integrity units, housed within individual prosecutors' offices, began popping up around the country beginning in 2007. CIR Report, at 5. There are now three in Florida—one in Jacksonville, one in Orlando, and one in Tampa.[7] The point of these units is to "do justice first." CIR Report, at 5. As such, these units are designed to investigate plausible claims of actual innocence. *Id.* It was under this auspice that Nathan, after reading an article in the Florida Times

[7] *See* Steve Newborn, *Hillsborough State Attorney to Seek Out Wrongful Convictions*, WUSF Public Media, 2018, *available at* https://wusfnews.wusf.usf.edu/post/hillsborough-state-attorney-seek-out-wrongful-convictions (last visited March 13, 2019)

Union about State Attorney Melissa Nelson's desire to create a conviction integrity unit, wrote a letter to the CIR on January 17, 2017, imploring the newly established unit to review his conviction. CIR Report, at 4.

After accepting the case, the CIR undertook a thorough investigation. The investigation culminated in a 44-page report with an additional 29 pages of exhibits and appendices released to undersigned counsel on February 25, 2019. The report concluded that "[a] jury presented with the evidence known by the CIR could not conclude, beyond a reasonable doubt, that either defendant committed the shooting and murder." CIR Report, at 40. This report was based not only on a review of all of the available records in the case, but also an independent investigation that spanned nearly 12 months. This report constitutes newly discovered evidence, as it represents a significant change in position by the body that initially prosecuted Clifford and previously opposed all of his appellate and postconviction efforts to overturn his convictions and sentences.

The CIR Report detailed the original investigation, the trial and post-conviction proceedings, its independent investigation, and analysis and conclusions. Importantly, the report detailed the lack of evidence of guilt , both old and new, and found that Nina's identification of Clifford and Nathan as the shooters created tunnel vision for the investigating authorities, leading them to ignore or explain away the physical evidence that contradicted Nina's identification. "The notion that one would process the scene but discount evidence that was inconsistent with the eyewitness' account that the shooting occurred from the inside is best described as 'confirmation bias.'" CIR Report, at 38. An effect of confirmation bias, the report notes, is "minimization of potentially exonerating evidence." *Id.* at 39. The following physical exculpatory evidence was available at the time of trial and minimized by prosecutors and police:

- A ballistics report indicating that all of the bullets came from a single gun (CIR Report, at 39);
- Negative results for gunshot residue on both Clifford's and Nathan's hands (*Id.* at 40);
- No evidence of blood or blood stains on Clifford's and Nathan's clothes and shoes (R. 577-78);
- Multiple pieces of evidence pointing to the shots coming from outside the bedroom window instead of inside the bedroom, including the damaged aluminum screen with an inward facing oblong hole, shattered glass window pane, glass on the bed, and curtains peppered with small holes (CIR Report, at 3).

Other evidence existed too, such as alibi witnesses and an eyewitness who saw a shooter outside. Inexplicably, defense counsel failed to present any such evidence.

In ferreting out the truth, the CIR reached some important conclusions, specifically, that the shooting occurred from outside the bedroom window, and that because the crime "occurred at night while the victims were sleeping, and through a bedroom window flanked by curtains," it would have been "physically impossible" for Nina to make a positive identification of the shooter. CIR Report, at 40. It further acknowledged that the eyewitness identification shaped the prosecution, at the expense of the physical evidence. CIR Report, pg. 42. "In foregoing the forensics, the State relied on the testimony of one individual, and it is upon this testimony alone that these two men are serving life sentences, in the face of **overwhelming contradictory forensic evidence and alibi testimony**." *Id.* (emphasis added).

This report was provided to an Independent Audit Board (IAB) that convened on two separate occasions to review the report and supporting materials. CIR Report, at 43. After reviewing everything, the five-member panel, consisting of two former prosecutors, a retired

former public defender, a retired former FBI agent, and a member of the public, unanimously concluded that there was insufficient evidence of guilt to support Clifford's and Nathan's convictions. Moreover, the panel found sufficient credible evidence of innocence. CIR Report, at 43.

This report, with its conclusions and IAB findings, constitutes newly discovered evidence. To vacate a conviction based on a claim of newly discovered evidence, a defendant must show that the evidence was unknown to counsel at the time of trial, and could not have been known by the use of diligence. *See Jones*, 591 So. 2d at 915-16. It is clear that a 2019 report from the State renouncing its 1976 prosecution was unknown at the time of trial, and could not have been discovered by the exercise of diligence. The CIR did not even exist until 2018, and the reinvestigation leading to this newly discovered CIR Report did not exist until 2019.

A defendant must also prove that the newly discovered evidence is of such a nature that it would probably produce an acquittal on retrial. *Id.* This is demonstrated by showing that the evidence so "weakens the case . . . so as to give rise to a reasonable doubt as to his culpability." *Williamson*, 961 So.2d. at 229 (internal quotations omitted). The State concedes this point. In its report, it finds that "[t]hese men would not be convicted by a jury in 2019 if the jury were presented with all the exculpatory evidence." CIR Report, at 44. While the report does not indicate as much, it is equally likely that the State would not and could not even pursue such a case today. As such, in light of the newly discovered evidence of the CIR Report, Clifford is entitled to have his conviction and sentence vacated.

Aside from the report itself constituting newly discovered evidence, the CIR undertook an incredibly thorough investigation which yielded a breadth of new, previously unknown and

unavailable evidence. That evidence is outlined below, and is also of such a nature, as evidenced by the CIR Report, that it would probably produce an acquittal on retrial:

i. Crime Scene Reconstruction

As part of its reinvestigation, the CIR employed Knox & Associates, a firearms, ballistics, and shooting incident reconstruction firm ("the Firm" or "Knox & Associates") to review prior documentation of the crime scene and conduct its own experiments. The firm visited the apartment where the shooting took place, and took photos and measurements. *See* November 27, 2018 Knox & Associates Report, at 12 [hereinafter Knox Report].[8] The firm also conducted gunfire sound testing, and gunfire testing with an exemplar aluminum screen. *Id.*

Since many witnesses, who were at the nearby party, reported hearing loud gunshots on the night of the incident, Knox & Associates conducted sound testing at the same apartment where the 1976 murder occurred to "determine the feasibility of gunfire being heard by witnesses . . . with the shooter being inside the bedroom versus outside the bedroom." Knox Report, at 16. The firm positioned a digital audio recording device with three microphones in the location of the party. *Id.* They fired test shots inside the apartment and the recording device "captured the gunshots at levels that were barely perceptible." Two shots fired from outside the bedroom window, however, were "clearly perceptible on the audio recording." *Id.* Said another way, the partygoers likely would **not** have heard the gunshots had they happened inside the apartment, as reported by Nina Marshall.

Further, a photo from the crime scene (CIR Report, Exhibit I) depicts an oblong hole in the bottom right hand corner of a metal screen on the exterior of the glass pane. CIR Report, at 34. As such, the firm also test fired shots through an aluminum screen to see whether the damage indicated

[8] This report is attached at Tab G.

by the crime scene photo could be caused by the six shots fired at the scene, and determined that it "was possible to fire all six shots forming only a single tear in the screen." Knox Report, at 17.

Aside from conducting its own experiments, Knox & Associates reviewed crime scene photographs from the original investigation, as well as police reports and other materials, and conducted computer modeling based on those reports and materials, and made the following conclusions:

- The shots most likely occurred from outside the bedroom, not from inside the bedroom. Knox Report, at 23;[9]
- The blood saturation on the floor inside the bedroom indicated that Marshall stayed in that location for an extended period after being shot. *Id.*;
- Sound testing indicated that the shots occurred from outside, rather than inside the bedroom. *Id*.;
- The physical evidence was consistent with the shots coming from outside the apartment. *Id*.

This is clearly newly discovered evidence. The two experiments conducted by Knox & Associates were unknown at the time of trial, satisfying the first prong of *Jones*. Further, Knox & Associates conducted testing at the actual apartment where the crime occurred, under the authority of the State, something the defense unlikely would have been able to accomplish, even if it had been attempted. As to the second prong, this report completely undermines the State's theory that there were two shooters *inside* the apartment, and instead points to a single shooter *outside* the apartment. A jury hearing this evidence probably would acquit.

[9] The Knox Report notes that the physical evidence supporting this conclusion is as follows: broken glass on the floor below the bedroom window, the torn window screen, the bullet on the floor directly below the window, and the confirmed bullet hole in the window frame. Knox Report, pg.at 22.

Indeed, the CIR Report found as follows with regard to this evidence:

> The evidence shows that Victim Marshall's description of the events is not accurate. There is evidence of only one gun being fired. It was forensically determined that the bullets recovered were fired from the same gun. A total of six bullets were recovered, again, indicative of one gun. So it is not possible that she saw muzzle flashes from two guns. Further, Victim Marshall's testimony does not account for the damage done to the screen, the broken glass in the window, the glass on the bed, and does not explain the wound paths of the gun shots.

CIR Report, pg. 37.

ii. *Brady* Evidence Regarding a Witness to the Actual Shooter

At the time of the crime, police interviewed Christopher Snype, who told officers that his neighbor Tony Gordon approached him and told him and his friend Major Skylark, "that he was sitting in his living room when he heard the first shot fired, he then looked out his window, and saw a black man in black clothing standing at the apartment window firing shots." While the State disclosed Tony Gordon to the defense, it failed to disclose Christopher Snype and Major Skylark. While initially this may seem insignificant, as Gordon was the actual witness, Gordon told officers in 1976, and maintains today, that he did not see any shooting. CIR Report, at 29. Further, during a polygraph examination conducted in 1976, Gordon told the polygraphist that he had been watching tv and could hear a party down the street, but retired to bed before the shooting. He also denied witnessing the shooting. Gordon failed the polygraph, and the State also failed to turn over those results.

While the CIR report does not directly state that evidence was withheld, the report notes "Christopher Snype, Snype's written statement, Major Skylark, and the fact that Gordon failed a polygraph was not listed on the State's discovery." CIR Report, pg. 30. As such, one can reasonably conclude that these items were not disclosed..

"The suppression by the prosecution of evidence favorable to an accused," violates due process. *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Kyles v. Whitley*, 514 U.S. 419, 437 (1995); *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). *See also Mordenti v. State*, 894 So. 2d 161, 168 (Fla. 2004) ("*Brady* requires the State to disclose material information within the State's possession or control that tends to negate the guilt of the defendant."). The United States Supreme Court further asserted in *Brady* that a state's suppression of material evidence will result in a new trial "irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87. *See also Guzman v. State*, 868 So. 2d 498, 506 (Fla. 2003) ("The *Brady* standard of materiality applies where the prosecutor fails to disclose favorable evidence to the defense."). To establish a *Brady* violation the defendant must show (1) that favorable evidence, either exculpatory or impeaching, (2) was willfully or inadvertently suppressed by the State, and (3) had the jury had that non-disclosed evidence, there is a reasonable probability they would have acquitted the defendant. *Owen v. State*, 986 So. 2d 534, 547 (Fla. 2008) (citation omitted).

It is clear that the evidence was not disclosed in discovery. It is equally clear that it is favorable and material. The State pursued a two-shooter inside the apartment theory, when an eyewitness saw one shooter outside, which completely contradicts the identification and version of the crime relayed only by the State's star witness Nina Marshall. While the eyewitness himself was disclosed, his testimony could have been impeached with the testimony of both Snype and Skylark, who would have testified that Gordon saw a single shooter, greatly undermining the State's case. That evidence could have been, and would be at a new trial, further corroborated by Harold Torrence, who said during his deposition that an eyewitness told him he saw the whole thing, but wouldn't say anything. CIR Report, at 30.

The CIR Report notes that information was significant, and points out that defense counsel failed to depose Tony Gordon or conduct investigative follow up. CIR Report, at 30. Even if counsel had deposed Tony Gordon, there is no reason to think that his statement that he did not see anything would have changed. Instead, counsel *needed* to know of Snype and Skylark, who would have provided the critical missing link between Tony Gordon and the shooting. This evidence is material and had the jury heard this evidence, in connection with all of the other evidence uncovered by the CIR, there is a reasonable probability they would have acquitted Mr. Williams and Mr. Myers.

B. <u>Other Evidence at Retrial</u>

In addition to the newly discovered evidence, this Court must also consider "the effect of the newly discovered evidence, in addition to all of the admissible evidence that could be introduced at a new trial," so there is a "total picture" considering "all the circumstances of the case." *Hildwin*, 141 So. 3d at 1187-88. A postconviction court must even consider testimony that was previously excluded as procedurally barred or presented in another postconviction proceeding in determining if there is a probability of an acquittal. *Swafford v. State*, 125 So. 3d 760, 775-76 (Fla. 2013). Below is some of the evidence defense counsel would present at a retrial.

i. Alibi Witnesses

At the time of Jeanette Williams' murder and Nina Marshall's attempted murder, Clifford was at a party down the road with multiple people. CIR Report, at 15-16. Officers spoke to many of these individuals who noted that they did, in fact, see both Clifford and Nathan at the party at the time in question. *See* CIR Report, Appendix I, Summary of Alibi Witness Interviews.

Despite the availability of numerous alibi witnesses, defense counsel presented none. At a new trial, counsel for the defense could present these alibi witnesses. Because they were all friends

with the decedent, they would make very credible witnesses, as they would have no reason to present an alibi for her killer. *See* CIR report, at 16. Further the CIR's investigation uncovered no evidence to suggest the women who provided an alibi for Clifford and Nathan had been coerced, threatened or financially rewarded. *Id.* at 17. "It was clear they grieved the loss of their friend, most attended her funeral, and during our interviews there was no suggestion that they would have provided a false alibi for Defendants Myers or Williams given their friendship with Victim Williams." *Id.*

In addition to the alibi witnesses listed by the defense, the CIR interviewed several other witnesses who were not listed. The new and old alibi witnesses were all consistent on key points that exculpate Clifford and Nathan: A large group of friends gathered at Rachael Jones' apartment, which was on the same block as Jeannette and Nina's apartment, to celebrate her birthday. CIR Report, at 11. Clifford and Nathan arrived at the party sometime after 1:00 a.m. with Clifford's pregnant wife Barbara Williams, Rico Rivers, and another woman named "Cookie." *Id.* These witnesses recalled Clifford and Nathan getting a plate of food from the kitchen, and Barbara Williams sitting in the kitchen. They were also consistent in hearing multiple gunshots, remembering Clifford going out on the porch to see what happened before coming back in, and recalling that Nathan was sitting eating in the living room at the time the shots were fired. *Id.* at 11-12. Everyone interviewed described the shots as very loud, and no one interviewed saw Clifford or Nathan leave the party before hearing the shots. *Id.* at 12. All the partygoers, including Clifford and Nathan, then went down the block to see what happened, when they realized police had arrived at 1550 Morgan St. *Id.*

This plethora of alibi testimony would no doubt undermine the State's case, particularly in light of the lack of physical evidence implicating Clifford and Nathan. Further, it is likely the jury would find their testimony, collectively, credible.

ii. Alternate Perpetrator

On October 21, 2014, Tony Brown executed an affidavit implicating Nathaniel Lawson. That affidavit was attached to Nathan's request to the conviction integrity unit to investigate his case. CIR Report, at 19. In the affidavit, Brown states that in April 1993, he met an old friend at a night club parking lot in Jacksonville, FL. October 21, 2014 Affidavit of Tony Brown [hereinafter Brown Affidavit]. During a conversation about the "old days in the projects," Lawson told Brown that someone else was doing time for a murder he committed. *Id.* He told Brown that he shot and killed Jeanette Williams, and attempted to shoot Nina. *Id*. Lawson further told Brown he fired shots from outside the bedroom window, then ran and jumped across the fence in the back of the apartment to a car, waiting for him on Beaver Street, driven by Rico Rivers. Brown Affidavit, at 2. The two went to Hilltop Apartments where they stayed until the following day. Lawson admitted that he was paid by Albert Young to shoot Jeanette because she owed him money for heroin Nina Marshall had stolen. *Id.*

Later, while doing time at Sumter, Brown met Nathan who asked him to execute the affidavit. The CIR spoke with Tony Brown as part of its investigation, and Brown reiterated to the CIR the contents of his affidavit. The CIR uncovered additional information supporting Nathaniel Lawson as an alternate perpetrator. Ronald Stansell, a childhood friend of Nathan, contacted the CIR to provide them with additional witnesses to whom Lawson confessed, including Leatrice Carter, James Stepps, and Frank Williams. The Conviction Integrity Unit noted that:

> None of the witnesses to Nathaniel Lawson's confession sought any benefit from the information. With the exception of Frank Williams, none of the witnesses had

> solicited this information. All felt it was in their own best interest to keep the information to themselves, and after Mr. Lawson's death believed the information had no legal significance.

CIR Report, at 20.

Leatrice Carter owned a beer and wine tavern with her husband, and told the CIR that Nathaniel Lawson stopped by the tavern sometime during the 90s, but before 1995. CIR Report, at 20. Lawson told Carter that "Williams was in prison for nothing because he didn't do it." *Id.* He also told her that Dot, the sister of Williams and mother of Nathan, and Frank, the brother of Clifford and uncle of Nathan, were mad at him. Lawson provided no additional information. CIR Report, at 21. Carter told Stansell at the time of Lawson's statements to her.

The CIR also spoke with Frank Williams, who is the brother of Clifford Williams. At some point, Frank learned that Lawson may have been involved, so he confronted Lawson. CIR Report, at 22. When Frank confronted Lawson, Lawson told him that he was "staying out of it" and did not provide additional information. Later, Diane Lawson, Nathaniel's sister who once dated Frank, told Frank that Nathaniel was ill and may want to clear his conscious. CIR Report, at 23. When Frank and Nathaniel met, Nathaniel told him he had been the shooter and that he did it to send a message. *Id.* Though Frank could not recall whether Nathaniel specifically provided Jeanette's and Nina's names, Frank told Nathaniel he messed up Nathan's and Clifford's lives. *Id.* Nathaniel offered to send money and told Frank he gave money to Dot to send to them. *Id.* Frank confirmed with Dot that this had been the case.

The CIR also spoke with James Stepps, who had been friends with Lawson until his death. CIR Report, at 24. Shortly before his death, Lawson told Stepps that he wanted to send Clifford Williams money because he was doing time for a woman he killed. *Id.*

Aside from the testimony of theses witnesses, the CIR also noted that documentation from 1976 supports the assertion that Lawson was present at the crime scene. CIR Report, at. 24. The general offense report noted that officers stopped a white pickup truck observed at the scene. Two black females and two black males were in the car. Barbara Williams was the driver, Raymond Rico Rivers was one of the black males, and the two remaining occupants were unidentified. *Id.* In Barbara's 1976 deposition, she said she left the party with Rico, Rosetta Simmon, and Nathan Lawson. CIR Report, at 25.

This testimony, while hearsay, would be admissible at a retrial. The Florida Evidence Code provides a hearsay exception for a Statement Against Interest. In particular, where corroboration demonstrates the trustworthiness of the statement, a statement tending to expose the declarant to criminal liability and offered to exculpate the accused may be admissible. *See* Fla. Stat. § 90.804(2)(c) (2013). However, such a statement against interest is only admissible if the declarant is unavailable. *See* Fla. Stat. § 90.804(2) (2013). Death is included the definition of "unavailable." Fla. Stat. §90.804(1)(d)(2013). Lawson's multiple confessions exposed him to criminal liability for the murder and attempted murder in this case, and were mutually corroborative and further corroborated by the independent investigative and deposition evidence tying Lawson to the crime scene. Furthermore, Lawson is deceased and is, therefore, unavailable as a matter of law. Thus, under the plain language of the Florida Evidence Code, Lawson's confessions to third-parties would be admissible at a new trial.

A jury hearing of a credible alternate perpetrator, supported by the testimony of multiple individuals, as well as by investigative documentation, probably would acquit.

iii. Ballistics Evidence

As discussed *supra*, all the bullets from the crime scene were fired from the same gun, thus defeating the state's two-shooter theory. Further, the window frame revealed a bullet hole in the lower right portion, and the hole "revealed the presence of carbonaceous material." July 5, 1976 Florida Department of Law Enforcement Ballistics Report. Also, the investigating detectives noted holes in the curtains when they arrived on scene. CIR Report, at 40. This information was available in 1976, and defense counsel failed to make use of it; however, at a retrial, competent defense counsel could, and would, introduce this evidence to dismantle the State's theory, and lead a jury to probably acquit.

iv. Gunshot Residue

At the 1976 trial, Detective Richard Bowen testified that he ordered gunpowder residue tests (GSR) for Clifford and Nathan in the early morning hours of May 2, 1976. (R. 631). The jury, however, never heard the results of those tests because defense counsel failed to call the individual who conducted the testing. The results, however, were that "[t]he amount of antimony found in the hand swabs was insufficient to indicate the presence of gunshot residue; therefore, no testing for barium was conducted." May 18, 1976 Bureau of Alcohol, Tobacco and Firearms Report.

Rather than simply calling the witness themselves, counsel for Mr. Myers called no witnesses, and counsel for Mr. Williams called Detective Bowen to mention the test and left the jury wondering about the results. During closing argument, counsel for Mr. Myers said that if the tests for gunshot residue had been positive, "you [the jury] would have heard from that dude. You would have heard from that witness in a second and Investigator Bowen being the competent homicide officer he is, expected to find that on someone that had fired a gun. . . or he wouldn't have gone to the trouble of calling Investigator Bryan down there and having the tests done." (R. 731).

At a new trial, competent defense counsel would affirmatively present this exculpatory forensic evidence that Clifford and Nathan did not test positive for gunshot residue on their hands the night of the crime and not leave the jury wondering about the results.[10]

v. Blood Evidence

Unlike the GSR test, the 1976 jury did actually hear from Detective Bowen that he examined both Clifford's and Nathan's shoes and clothes for blood and blood stains, and that those examinations yielded negative results. (R. 630). This evidence could again be placed before a jury,[11] that, with all the additional corroborating evidence, would use this as a basis to acquit.

C. Mr. Williams Has Exercised Diligence; Alternatively, the Interests of Justice Require This Court to Excuse the Diligence Requirement

As demonstrated above, Clifford has pursued every lead and legal remedy available to him, to no avail. Even if this Court determines that Clifford has not exercised diligence regarding any or all of the newly discovered evidence, Florida law allows courts relax the diligence requirement when the interests of justice so require. *See Malcolm v. State*, 605 So. 2d 945, 948 (Fla. 3rd DCA 1992) (Where defendant pled to possession of a handgun by a convicted felon and was not actually a convicted felon, the Third District Court of Appeal found that "the interests of justice require us to relax this [diligence] requirement so that the conviction of an innocent man may be corrected."); *Hanson v. State*, 187 So. 2d 54, 55 (Fla. 3rd DCA 1966) (Where new evidence conclusively proved defendant's innocence, the Third District Court of Appeal, while noting that the evidence of innocence could have been produced at trial with the exercise of due diligence, found that the

[10] Undersigned counsel is unaware of whether the analyst who performed the testing is still living and whether he would be available to testify at a retrial. If not, given the CIR Report, it can be assumed that the State would stipulate to the report's authenticity and admissibility.

[11] Like the GSR result, defense counsel is unaware of whether Detective Bowen is still living. If not, his former testimony would be admissible under Fla. Stat. § 90.804(2)(a), which provides a hearsay exception for former testimony provided that the declarant is unavailable.

interest of justice required a new trial "upon the basis that it is better to bend a rule of procedure than to use the rule to convict an innocent person."); *Jackson v. State*, 416 So. 2d 10, 10 (Fla. 3rd DCA 1982) (In a case where diligence *had* been exercised, the Third District Court of Appeal noted that even if diligence had not been exercised, "the due diligence requirement is not an inflexible one," because the goals of achieving justice and not wrongfully convicting and imprisoning the defendant are "paramount."); *Venuto v. State*, 615 So.2d 255 (Fla. 3d DCA 1993) (Though the trial court ruled that the defendant had not exercised diligence in obtaining an affidavit from a recanting victim, the Third District Court of Appeal reversed, concluding that "the achievement of the ends of justice" warranted such a result.). *Cf. Ragen v. Paramount Hudson, Inc.*, 434 So. 2d 907 (Fla. 3d DCA 1983) (In a civil case where the trial court denied a motion to set aside the judgment based on newly discovered evidence, the Third District Court of Appeal found that "[w]hen, as here, it is likely that a correctable injustice has been done, we will not hesitate to order that a new trial be conducted based on all the available evidence.").[12]

Thus, it is clear then, that when there is a cogent, provable claim of innocence, the interests of justice allow diligence to be excused. The instant circumstance—where the State itself has determined that substantial, credible evidence of innocence warrants vacating the convictions and sentences, is precisely that which requires the due diligence requirement to yield in favor of taking cognizance of and acting on evidence of actual innocence. As such, Clifford should be granted relief based on his claims of newly discovered evidence.

CONCLUSION

[12] Though the Court found there had not been reasonable diligence, it cited to *Jackso*n to note that it would not have mattered if there had not been reasonable diligence. The importance of this case is underscored by its civil nature. Here, no innocence claim was raised. Rather, the Court simply said the evidence, that a previously sunken boat was not the one allegedly sold to the plaintiff, would have changed the result of trial, "in which compensatory and punitive damages were assessed on the basis of interested and uncertain evidence that it was."

As demonstrated *supra*, the CIR Report stands on its own as newly discovered evidence, and contains additional newly discovered evidence. The report is significant, in that the State has abandoned its previous position about the guilt of two convicted defendants. This evidence creates more than a reasonable doubt about Mr. Williams' guilt. Had this evidence been available at the time of his trial, a jury probably would have acquitted. *Jones*, 591 So. 2d at 915-16 (Fla. 1991). In addition to the newly discovered evidence, this Court must consider all evidence that could be presented at a new trial. *Hildwin v. State*, 141 So. 3d 1178, 1187-88 (Fla. 2014). Aside from the new information within the CIR report, that information must be considered in light of the existing evidence, including statements from multiple alibi witnesses and the credible confession of another man who was documented as being at the crime scene, which were never presented at trial. As a result, this Court must vacate Mr. Williams' convictions and sentences.

PRAYER FOR RELIEF

WHEREFORE, Mr. Williams prays this Court grant him relief including but not limited to:

A. An opportunity to amend the Motion as necessary;

B. An opportunity to file a Reply to any pleading filed by the state;

C. An evidentiary hearing on the allegations made herein, should the state contest them;

D. The authority to exercise compulsory process, to issue subpoenas for the production of witnesses and documentary evidence, and to undertake pre-hearing discovery as necessary;

E. The vacation of his convictions and sentences for first-degree murder and first-degree attempted murder;

F. The dismissal with prejudice of all indictments against Mr. Williams related to the May 2, 1976 murder of Jeanette Williams and attempted murder of Nina Marshall;

G. That he be immediately released from state custody; and

H. All other and further relief that the Court deems just and proper.

Respectfully Submitted,

/s/ George E. Schulz, Jr.
George E. Schulz, Jr., Esq.
Fla. Bar No.: 169507
Holland & Knight LLP
50 North Laura Street, Suite 3900
Jacksonville, FL 32202
Direct 904.798.5462
Mobile 904.629.2462
Fax 904.358.1872
Buddy.Schulz@hklaw.com

Counsel for Mr. Williams

VERIFICATION

STATE OF FLORIDA)
)
DUVAL COUNTY)

Under the penalties of perjury, I, CLIFFORD WILLIAMS, swear that (1) I speak, read, write and understand English, (2) I have read this Motion or that it has been read to me, (3) I understand its contents, and (4) that all the facts stated in the Motion are true and accurate, this, 20th day of March, 2019.

CLIFFORD WILLIAMS

Notary Public, State of Florida

(SEAL)

ANGELA M. JUDAH
MY COMMISSION # FF219521
EXPIRES: July 20, 2019

Angela M. Judah
Printed Name

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail to the following person, this 28th day of March, 2019:

Shelley Thibodeau, Assistant State Attorney
Office of the State Attorney
Conviction Integrity Review Division
Fourth Judicial Circuit
SThibodeau@coj.net

Krista A. Dolan, Esq.
Seth E. Miller, Esq.
Innocence Project of Florida
1100 E. Park Avenue
Tallahassee, FL 32301
kdolan@floridainnocence.org
smiller@floridainnocence.org
Counsel for Mr. Myers

/s/ George E. Schulz, Jr.
George E. Schulz, Jr., Esq.
Counsel for Mr. Williams

TAB A

Conviction Integrity Investigation

State of Florida v. Hubert Nathan Myers
State of Florida v. Clifford Williams, Jr.

State Attorney's Office
Fourth Judicial Circuit of Florida

March 26, 2019

Table of Contents

I. EXECUTIVE SUMMARY

In 1976, 34-year-old Clifford Williams ("Defendant Williams") and his nephew, 18-year-old Hubert Nathan Myers ("Defendant Myers") were convicted of the murder of Jeanette Williams ("Victim Williams") and the attempted murder of Nina Marshall ("Victim Marshall").[1] Both men are currently serving life in prison. They have been incarcerated for the past 42 years.

Today, after review and reinvestigation of the case, evidence, and trial, the State of Florida no longer has confidence in the integrity of the convictions or guilt of the accused. This Executive Summary summarizes the facts in 1976, the evidence presented at trial, the lack of evidence tendered at trial on behalf of Defendants Myers and Williams, and the evidence discovered since that time.

On May 2, 1976, at approximately 1:30 am, Victim Williams and her girlfriend Victim Marshall were shot while asleep in their bed. While Victim Williams died instantly, Victim Marshall survived. After being shot, Victim Marshall stumbled out of her apartment, flagged down a passing car, and was taken to the hospital. At the hospital, Victim Marshall indicated that she and Victim Williams had been shot by Defendant Myers and Defendant Williams.

After the police arrived, the defendants were among a group of on-lookers who came down the street to the scene to see what had taken place. Defendants Myers and Williams stated they were at Rachael Jones' birthday party at the time of the shooting. The party was held down the block from the victims' apartment. Many of the party-goers confirmed that Defendants Myers and Williams were at the party when they heard gunfire. Despite their alibis, and based solely on Victim Marshall's statement, both men were arrested less than two hours after the shooting.

Just two months after their arrests, the State of Florida jointly tried Defendants Myers and Williams, and sought the death penalty.[2] The first trial resulted in a mistrial.[3] During the second trial, the State offered Defendant Myers a disposition of five years in prison to resolve his case in exchange for testimony against his uncle Defendant Williams. Eighteen-year-old Myers, who had never been convicted of a felony and was facing the death penalty, declined.[4] Both men were subsequently convicted following a trial that lasted two days.

---

[1] Defendant Williams and Victim Williams were not related.

[2] Present-day homicide prosecutions routinely take 18 months or longer to prepare for trial. The extended time typically results from forensic analysis of the evidence, investigation and discovery conducted by the defense, and pretrial motion practice. A capital case going to trial two months after arrest would be highly abnormal in this day and age.

[3] The mistrial resulted from an error, not a hung jury.

[4] During a recent interview, Defendant Myers said that he and his uncle were at the party, and testifying differently would have been untruthful. Myers' recollection is that he was offered two years in prison if he would enter a plea to murder and would testify against his uncle. The plea offer was confirmed by the prosecuting attorney, who recalled

At trial, the State's theory of the case was that two shooters committed the murder. The State relied entirely on the testimony of Victim Marshall for its argument that the evidence supported the conviction of both defendants. Although the State did not present any testimony to support a motive at trial, the State's apparent theory of motive was that Victim Williams owed Defendant Williams $50.00 for a drug debt. Defendant Williams was indeed a well-known heroin dealer and had a significant criminal record.

Victim Marshall testified at trial that the defendants entered her apartment, came into the bedroom she shared with Victim Williams, positioned themselves at the foot of the bed, and fired until each of their guns were emptied. Victim Marshall stated she saw muzzle flashes from both guns. Although dark, she testified that she could identify the men from the light given off by the bedroom television. The State's case solely consisted of Marshall's identification of the defendants. No physical evidence linked Myers or Williams to the shooting.

Victim Marshall's version of the shooting was not corroborated--and has not been corroborated since--by any other testimony, physical evidence, or scientific evidence. In fact, the physical and scientific evidence actually ***contradicts*** her testimony about what happened. The physical evidence indicates that the shooting occurred from ***outside*** and not from inside the bedroom as Victim Marshall described. This evidence consists of the following:

- The aluminum screen outside the bedroom window had a hole in it and the prongs of the damaged aluminum mesh pointed inward, an indication that the bullet traveled from outside to inside;
- Ballistic testing confirmed that all six rounds fired through the aluminum screen could create the damage documented in the scene photograph.
- The glass window pane (inside the screen) was shattered and broken glass was located inside the bedroom, beneath the window, and on top of the bed. No glass was located outside the window;
- Curtains that hung in front of the window were peppered with several small holes; a hole in the bottom corner of the window frame was identified as a bullet strike and contained gunshot residue;
- There were no other bullet strikes located within the bedroom;
- Five bullets and two bullet fragments, for a total of six bullets, were collected from inside the bedroom and the bodies of the victims.

---

he made an offer to resolve Defendant Myers' case for five years in prison, but he did not remember requiring testimony as part of the offer.

- The bullet trajectory, based upon the documented wound path, is consistent with the bedroom window being the shooting position.
- The irregularly shaped entrance wound to the back of Victim Williams' upper arm is indicative of the bullet striking an intervening object prior to entering the arm, which substantiates the bedroom window as the shooting position.
- Auditory testing of the firing of rounds of .38 caliber ammunition concluded that rounds fired inside the bedroom could not be heard by people at the neighboring party while substantiating that rounds could be heard if fired outside the window.

Additionally, the evidence also contradicts Victim Marshall's account that two guns were emptied. Ballistics analysis concluded that the six bullets collected came from one gun and had been fired from a single, six-shot, .38 caliber revolver. There was no forensic evidence of a second gun being fired.[5]

It is apparent from the very first report written in this matter that law enforcement grappled with the inconsistencies between the physical evidence and Victim Marshall's account. They ultimately attempted to reconcile them by concluding "from physical evidence at the scene it appears as though the suspects in this case intended to make it look as though the victims had been shot by someone from the bedroom window . . . ," theorizing that the shooter "set up" the scene to appear as if the shots had been fired from outside.[6] The problem is that this conclusion was inconsistent with what Victim Marshall said she saw, and does not explain all of the physical evidence.

Trial counsel for the defendants accepted the State's theory of <u>how</u> the shooting occurred and simply denied Victim Marshall's account of <u>who</u> committed the shooting. At trial, defense counsel waived opening statements, presented no witnesses, and entered no evidence. During closing arguments, defense counsels' focus was on Victim Marshall's lack of credibility as a witness. The physical evidence which contradicted Victim Marshall's testimony was inexplicably never known to the jury. There was no mention at trial of the damaged screen, broken window pane, glass on the bed, pierced curtains, or ballistics evidence.

Since their convictions, both defendants have maintained that they were at Rachael Jones' party at the time Victim Williams and Victim Marshall were shot. Many of the people whom they

[5] In addition to the six .38 caliber bullets found from the scene, a .32 caliber bullet was removed from the body of Victim Williams and was included in the items received by law enforcement from the Medical Examiner's Office. The .32 caliber bullet was not part of this shooting event, and the ME noted the bullet was surrounded by scar tissue. The bullet was then forwarded by law enforcement to the ballistics expert. The .32 was mentioned in both the medical examiner report and ballistics report. It seems that perhaps this .32 caliber bullet may have inadvertently advanced the "two shooter" theory.

[6] General offense report, p. 16.

were with at the time of the shooting are alive today and still confirm what they said in 1976--that Defendants Williams and Myers were at the party at the time shots rang out. None of these individuals were called to testify at the trial.

After decades of maintaining their innocence, and filing multiple unsuccessful motions for post-conviction relief, these 1976 convictions are now before the State Attorney's Office via a petition for review submitted to the Conviction Integrity Review ("CIR") Division.

On January 17, 2017, Defendant Myers sent a letter to the State Attorney's Office claiming he was innocent of having committed the crimes for which he was convicted and requested assistance.[7] The office accepted review of the matter and engaged in a comprehensive and thorough review of the case. The CIR investigation confirmed multiple alibi witnesses, who recall being with both defendants at the nearby party when shots were fired. The investigation also confirmed Defendant Myers' claim that another man – ***Nathaniel Lawson*** – admitted to several people that he shot the women through the window, killed Victim Williams, and regretted that Defendants Myers and Williams were "doing time" for his crime. Lawson died in 1994; however, the people to whom he made these incriminating admissions are living. Importantly, after confirming that Lawson indeed claimed that he murdered Victim Williams, the CIR investigation was able to independently confirm Lawson's presence at the scene at the time of the shooting.

Every investigative step the CIR took corroborated Defendant Myers' claim of innocence, and placed into doubt Victim Marshall's identification. Notably, although not admissible as evidence at trial, Defendant Myers readily consented to undergo a JSO-administered polygraph examination when it was requested by the CIR.[8] That examination showed Defendant Myers answered the questions truthfully.

While no single item of evidence, in and of itself, exonerates Defendant Myers or Defendant Williams, the culmination of all the evidence, most of which the jury never heard or saw, leaves no abiding confidence in the convictions or the guilt of the defendants. It is the opinion of the CIR that these men would not be convicted by a jury today if represented by competent counsel

[7] Myers claimed he read an article in the Florida Times Union newspaper where State Attorney Melissa Nelson stated she was interested in creating a unit within the office to review wrongful convictions. In his letter, he made five claims: (1) he had 35 alibi witnesses who were at a birthday party where he was a guest at the time of the offense, who were not called as witnesses at trial; (2) a neutron activation test was conducted on his hands less than 3 hours after the shooting and showed no gunshot residue; (3) testing showed gunshot residue on the window frame from the bedroom window which was not admitted at trial; (4) there was evidence that the shooting occurred outside the bedroom window; and (5) the only evidence at trial to support his conviction was that of an eyewitness. Defendant Myers followed up this letter with a copy of the ballistics report and an affidavit from a man, who affirmed that Nathaniel Lawson had confessed to having committed this murder.

[8] Defendant Williams also readily agreed to submit to a polygraph but was unable to complete the examination due to his diminished cognitive ability.

who presented all of the exculpatory evidence that exists in this case for the jury's consideration. This report outlines the basis for that opinion.

II. THE STATE ATTORNEY'S ROLE IN CONVICTION INTEGRITY

It is a priority of this office to maintain public trust and confidence while seeking justice for the citizens who live within the Fourth Judicial Circuit. Justice encompasses seeing that the correct result occurs, ensuring that the guilty are convicted and appropriately punished, and ensuring that the innocent are not. The State Attorney's Office for the Fourth Judicial Circuit recognizes that prosecutors have a continuing, post-conviction ethical obligation to pursue justice. When an innocent man or woman is convicted and the guilty person is not held accountable justice as a whole suffers. Moreover, the individuals involved in the case bear the brunt of this miscarriage--the accused who is wrongly punished, the community and their confidence in the criminal justice system, and, most importantly, the victim of the crime who has not received true justice.

Prosecutors are members of the Florida Bar, and as such, we are governed by the Rules of Professional Conduct of the Florida Bar, which require prosecutors to act upon "new, credible and material evidence" that creates a reasonable likelihood that a convicted defendant did not commit the offense for which the defendant was convicted. The obligation to do justice continues when new, credible, and material evidence show a person is factually innocent. We, therefore, are willing to consider and review cases in which credible information is provided suggesting that a prior conviction may not be right.

III. PROCESS NOW EMPLOYED BY THE STATE ATTORNEY'S OFFICE

Beginning in 2007, local prosecutors' offices around the country began developing conviction integrity units to review claims of wrongful conviction. There are now approximately 30 units around the country. The theory is simple—unlike most lawyers, the prosecutor's role is unique because he or she is to do justice first and pursue the wishes and desires of others second. Following much study and review of the current best practices, this office proudly created the first conviction integrity unit in the State of Florida in January 2018. In furtherance of our ethical obligations, the purpose of the CIR is to review and investigate claims of actual innocence, and provide analysis and assistance to address the prevention of errors/issues which might lead to a miscarriage of justice. The CIR is tasked with investigating and resolving claims of actual innocence arising out of felony convictions obtained in the Fourth Judicial Circuit that are capable of being substantiated by credible, factual information or evidence previously not considered by the original finder of fact. Plausible claims of actual innocence are those which are worthy of acceptance and provide a reasonable and probable likelihood that the petitioner did not participate in or commit the crime.

Every petition submitted to the CIR is reviewed by the director of the division and an investigator in accordance with the CIR's promulgated policies and procedures. If the petition meets the criteria, an investigation is initiated. Each case is investigated based upon the unique facts and circumstances of the claim. The CIR's investigation may include, but is not limited to, a review of agency files or other relevant documents, review of trial, appellate and post-conviction legal briefs and transcripts, conducting witness interviews and obtaining sworn statements, submitting evidence for testing or retesting at the discretion of the office and based upon the availability of funds, and otherwise examining and investigating the claims made by the petitioner.

Once the CIR has concluded its independent review and investigation, a report and recommendation is submitted to an Independent Audit Board (IAB) comprised of five members of our community. These individuals have committed their time, pro bono, to review the findings of the CIR to verify that the recommendation of the CIR is supported by substantial and credible facts and information. The elected State Attorney is vested with the sole authority to make the final decision to conclude the matter as appropriate.

IV. POTENTIAL OPTIONS

This report is a summary of the investigation that was conducted, the findings of our review, and the basis for the CIR recommendation. At the conclusion of a review and investigation, the recommendation of the CIR will take one of two forms. First, the CIR may conclude that the petitioner's claim is not supported by credible evidence or is not susceptible to further investigation. If this happens, the CIR will deny the claim and will not recommend a change in legal status. The CIR will not second-guess jury decisions about witness credibility or the weight of the evidence. When a jury has considered the same evidence without more, the CIR will not substitute its judgment for theirs.

Second, the CIR may locate credible evidence that exonerates a defendant or that shows such substantial doubt about a defendant's guilt the conviction may not be reliable. When that happens, the CIR will recommend that the State Attorney's Office initiate, or not oppose, a motion to vacate the conviction based upon:

A. A substantiated lack of faith in the original conviction because substantial, credible evidence calls into question the integrity and reliability of the conviction or the manner in which the conviction was secured. The CIR may not be able to affirmatively prove the innocence of the accused, but the overwhelming weight of the evidence supports the accused's claim of innocence, or the manner in which the conviction was obtained undermines trust in the process. If the conviction is overturned, further prosecutorial action, such as retrial of the case, may be warranted; or

B. The fact that the reinvestigation of the case establishes factual innocence based upon substantial, credible evidence, and there is affirmative evidence of the accused's innocence. If the conviction is overturned, the State would most likely dismiss the information or indictment.

V. THE 1976 CRIME

A. Overall Summary

By way of background information, in May 1976, Victims Williams and Marshall were in a romantic relationship and lived in a first floor apartment at 1550 Morgan Street, Apartment #1, Jacksonville, FL. Victim Williams had lived in the apartment for some time with a prior roommate, Ms. Christine Mitchell. Mitchell had one bedroom and Victim Williams had the other. Mitchell was prosecuted for sale of heroin and went to prison in 1975. Prior to being sentenced to prison, Mitchell had been in a relationship with Defendant Williams. Defendant Williams was married at that time to Barbara Williams, but he was seeing Mitchell and would visit her apartment at 1550 Morgan Street. Defendant Williams is not related to Victim Williams. Defendant Myers is the nephew of Defendant Williams, and he would hang out with his uncle often, so Mitchell and Victim Williams knew both men. When Mitchell went to prison, she asked Defendants Myers and Williams to keep watch over the apartment. Defendant Williams paid the rent, and Defendant Myers would stay at the apartment on occasion. Defendants Williams and Myers both had keys to the apartment.

Victim Marshall began dating Victim Williams at the beginning of 1976, shortly after Victim Marshall finished serving a prison sentence and was released from prison. At some point in the spring of 1976, Victim Marshall moved into the apartment at 1550 Morgan Street with Victim Williams where they shared Victim Williams' bedroom. (See Exhibit A). Victim Williams worked at a car wash, and Victim Marshall was unemployed at the time. Victim Marshall was an admitted heroin user, and she would sell drugs to support her habit. Victim Marshall testified that Victim Williams also used and sold small quantities of drugs.

Defendant Williams was a heroin dealer who also owned a pool hall on the corner of Davis and 1st Street.[9] According to Defendant Williams, the pool hall had several pool tables, a juke box, and was a convenience store where people could buy drinks, snacks, and essentials. Defendant Myers managed the pool hall for his uncle. He would open the pool hall in the mornings and would hang around there much of the day.

[9] Due to his criminal activities, Defendant Williams had attracted the attention of the police. He had been arrested several times and, according to several witnesses, he was the target of frequent police contact.

On the evening of May 1, 1976, into the early morning hours of May 2, 1976, a birthday party for Rachael Jones was taking place at her apartment located at 1604 Morgan Street, Apartment #2, which was down the block from Victim Williams' apartment. The apartment buildings are quadraplexes constructed of concrete block and have two apartments on the first floor and two apartments on the second floor. There are four of these identical apartment buildings, side by side to one another. The building where the party was taking place is located approximately 150 feet down the street from the apartment building where Victim Williams lived. (See Exhibit B).

Sometime around 1:00 am, Defendant Williams and his wife, Barbara, Defendant Myers, Raymond Rico Rivers, and Rosetta Simmon (friend of Barbara Williams) arrived at the party together. There were many people at the party, all packed into a small apartment. Sometime later, between 1:30 and 2:00 am, the party-goers described hearing what sounded like gunshots being fired. The people at the party stopped what they were doing for a few minutes to see what would happen, and then carried on with the celebration. A short time later, the police and rescue arrived at 1550 Morgan Street. Someone came into Rachael Jones' apartment to announce the police were parked in front of Victim Williams' apartment building, and everyone left the party to see what had happened.

Once outside, Defendant Myers announced himself to the police, told the police that he stayed at the apartment, and was asked by the police to identify a person inside the apartment. Defendant Myers went inside and identified Victim Williams as the deceased. He went back outside and remained with the crowd. Shortly thereafter, at 3:00 am, Defendant Williams was approached by the police, handcuffed, and arrested. Before being transported, Defendant Williams asked individuals at the scene to contact his attorney and make a list of the people at the party. Shortly thereafter, at 3:10 am, police arrested Defendant Myers and transported both men to the police station for questioning.

Victim Marshall had also been shot. She was able to make her way out of the apartment, flagged down a passerby in a vehicle, Mr. Harold Torrence, and was taken to the hospital by him. She provided Mr. Torrence no information about what had taken place other than she had been shot and she thought Victim Williams was dead. They arrived at the Emergency Room at 2:07 am. While in the Emergency Room, Victim Marshall communicated to a police officer that she had been shot by "Clifford Williams" and "Nathan" and asked that someone check on Victim Williams. This is what led to the arrest of Defendants Williams and Myers in the early morning hours of May 2, 1976.

Both Defendants Myers and Williams told the detectives they had been at Rachael Jones' birthday party, and both denied shooting a gun at any point that night. The detectives ordered a gunshot residue kit be used to collect possible evidence off the hands of both Defendants

Williams and Myers. This was done around 5:45 am while both men were in custody. The men were then booked and remained in custody until their trial.

B. The JSO Investigation and Physical Evidence

Jacksonville Sheriff's Office ("JSO") homicide detectives arrived at the apartment around 2:45 am, and began processing the scene. Victim Williams was found lying in her bed, face down on her stomach, with her right cheek on the mattress, and her legs extended toward the foot of the bed. The detectives noticed that there was a hole in the screen of the bedroom window, that the glass pane was broken, and that there was glass in the bed. The hole in the screen was "pushed from the outside to the inside." (Bradley, p. 11). The screen and the window were taken into evidence, and the window was sent off for analysis at the crime lab. Detective Bradley thought that the screen was also sent off for analysis and came back with gunpowder on it, although he could not be sure.[10] (Bradley, p. 12); ..\..\..\John Bradley.pdf

The detectives noted some small holes in the curtains that were hanging in front of the window, but the curtains were not collected. Detective Bradley checked the area outside the window for fingerprints, but did not find any. Two bullets were located by JSO in the bedroom, one on the mattress and one on the floor under the bedroom window. The remainder of the bedroom was relatively undisturbed, with the exception of blood which had pooled on the mattress and the floor. A crime scene detective photographed the interior and exterior of the apartment.[11] Photographs\Williams - Meyers.pdf; Photographs\Williams photos 2.pdf

While they were still at the scene, the detectives received communication from a police officer at the hospital and were told that Victim Marshall had identified Defendants Williams and Myers as the shooters.[12] Defendants Williams and Myers were part of a large crowd, mainly comprised of the party-goers who gathered when the police arrived. They were located in the crowd and arrested.

The detectives understood that Defendants Williams and Myers claimed to have been down the street at Rachael Jones' apartment at the time of the shooting. The detectives spoke to Rachael Jones at the time of the defendants arrest and interviewed many of the party guests over the next few weeks who confirmed Defendants Williams and Myers presence at the party at the time they heard gun fire.

[10] There is no report in the SAO file of an analysis of the screen.

[11] The physical items seized are no longer available, so we relied on the details documented in the police reports and depositions.

[12] This officer happened to be at the hospital investigating another matter when Victim Marshall was admitted.

C. The Gunshot Wounds

Victim Williams sustained four injuries: one to the back of her head and three to the back of her left upper arm. The bullet that entered the back of her head proceeded upward toward the midline of the forehead where a .38 caliber bullet was recovered during autopsy. (ME diagram, GSW #4) This injury was fatal, and rendered her immediately incapacitated. According to the medical examiner, Victim Williams would have been rendered unconscious and there would have been no meaningful movement after receiving the head injury. (Dr. Lipkovic, TT, p. 5, 7); ME testimony.pdf Of the upper arm injuries, a bullet entered the back of the left upper arm, and was recovered in the shoulder joint (GSW #1); a bullet entered midpoint between the elbow and shoulder and exited out the front of the arm (GSW # 2), and a third bullet entered the back of the left arm at the elbow and traveled to the inside of the forearm (GSW #3). This bullet struck bone and fragmented with a large piece of the fragment exiting the inside of the lower arm and a small fragment was recovered in the forearm. (Dr. Lipkovic, TT, p. 7); Autopsy Report\Autopsy Diagram JW.pdf.

The Medical Examiner also discovered a .32 caliber bullet during the autopsy of Victim Williams and made mention of this in his report. Although this bullet was collected and given to law enforcement, the report concluded that this injury was old and not relevant to this event as it had healed and was surrounded by scar tissue.

Victim Marshall sustained three injuries: two bullets entered the left side of her neck, one exited the front part of her neck at the level of the thyroid, and the other exited the right side of her neck. The third injury was to her left forearm and a damaged bullet was recovered. (Dr. Stephenson, TT, p. 4); Testimony of Marshall's doctor.pdf

D. Ballistics Analysis

The detectives collected the following bullets and bullet fragments from the crime scene:[13]

- Two .38 caliber bullets (listed as recovered from the body of Victim Williams);
- A bullet fragment (listed as recovered from the body of Victim Williams);
- One .38 caliber "damaged bullet" portion (listed as recovered from the body of Victim Marshall);
- Two .38 caliber bullets recovered from inside the apartment;
- One .38 caliber bullet (collected from the apartment maintenance man who stated he found the bullet in the bedroom); and

[13] Information documenting the recovery of the bullets can be found in the general offense report, medical examiner's report, and testimony of the Medical Examiner and Victim Marshall's physician.

- One .32 caliber bullet (listed as recovered from the body of Victim Williams but determined to be an artifact from a prior and unrelated shooting).

These items were them submitted to the Tallahassee Regional Crime Lab for analysis. According to the Tallahassee Regional Crime Laboratory report, authored by Mr. Don Champagne on July 5, 1976, all of the .38 caliber bullets submitted in this case came from the same gun, a .38 caliber revolver. No other caliber bullets were recovered from the scene, and no other caliber bullets were recovered from the bodies of the victims, with the exception of one .32 caliber bullet recovered from Victim Williams that was medically established to be irrelevant to this event.[14] Additionally, the two bullet portions were consistent with the other .38 caliber bullets submitted but were too damaged "for conclusive examination results." The use of a revolver was also substantiated by the lack of any shell casings at the scene, since a revolver does not eject shell casings. FDLE report.pdf; (See Exhibit C).

E. Statements of Key Alibi Witnesses

The attorneys for Defendants Myers and Williams filed a Notice of Intent to Claim Alibi, and listed 43 people on that document. Some of these individuals were interviewed by the police the night of the murder or in the days following the incident. Others were deposed by the State. Some were never interviewed or deposed.

Consistent among the statements of the alibi witnesses who were interviewed was that a large group had gathered at Rachael Jones' apartment to celebrate her birthday. Rachael Jones was gay, as were many of the women who lived on the block, and they were a close knit group of friends. Everyone chipped in a few dollars for food and drinks, including Defendant Williams.

The people on the block knew Defendants Myers and Williams, and they had been invited to the party by Caroline McDaniels. Defendants Myers and Williams came to the party sometime around 1:00 am with Barbara Williams (Defendant Williams' pregnant wife), Rico Rivers, and another woman known as "Cookie." Several people stated that they did not know Cookie, but described her as a heavyset woman who was a friend of Barbara Williams. People recalled the defendants each getting a plate of food in the kitchen, and most remembered Williams' wife being offered a seat at the kitchen table because she was pregnant. Consistent among people's recollection was that during the party they heard multiple gunshots fired and stopped doing whatever they were doing for a minute. Hearing gunshots in this neighborhood was not unheard of, but was not so common as to go unnoticed. People recalled looking around at one another to assess the situation. Many people said that Defendant Williams stepped out on the

[14] Autopsy revealed "a .32 caliber lead bullet which is located close to the skin and is completely surrounded and capsulated in fibrous tissue. This apparently represents an old gunshot wound with evidence of healing." (See Medical Examiner's Autopsy Report, p. 3.)

porch of the apartment, with his plate of food, to look outside, and then came back in and said he didn't see anything. Most people described Defendant Myers as sitting in the living room eating his plate of food at the time the shots were heard. Joann Fleming was specially asked if Defendant Myers went outside with Defendant Williams to check on the source of the shooting, and she testified that he had also gone outside. (Fleming, p. 6-7). Everyone who heard the shots described them as loud. No one interviewed saw Defendants Myers or Williams leave the party prior to hearing the shots.

Shortly after hearing the shots, someone came into the party and announced that rescue and the police were down by Victim Williams' apartment. Everyone from the party, including Defendants Williams and Myers, went outside and down the street to find out what had happened. When it was discovered that Victim Williams had been shot and killed, her friends and neighbors were distraught.[15] (See Appendix I--summary of individual statements).

i. Barbara Williams

Barbara Williams was deposed by the prosecutor in 1976.[16] She and her friend Cookie (Rosetta Simmon) met up with Defendant Williams, Defendant Myers, and Rico Rivers at Rip's Corner located on Davis Street prior to driving to Rachael Jones' party. (Williams, p. 6-7, 17). Mrs. Williams stated they stayed at the party once they got there, and she named several people she knew who were present. (Williams, p. 24-25). Mrs. Williams stated that she never saw a gun that night, and she verified both defendants were at the party. (Williams, p. 40). When she heard gunshots fired, she remembered seeing her husband in the living room with a plate of food in his hands. (Williams, p.34). Defendant Myers was also in the living room, and Rivers was standing next to the refrigerator in the kitchen. (Williams, p. 35). She remembered Defendant Williams going to the apartment door and looking out and making a comment about a drunk or someone shooting. (Williams, p. 37). Barbara Williams\Deposition.pdf

ii. Rico Rivers

Raymond "Rico" Rivers was deposed by the prosecutor.[17] He stated he knew both Defendants Williams and Myers, and was with Defendant Williams for most of the afternoon and evening of May 1 into May 2, 1976. He and Defendant Williams had first been at the Pickup Lounge and

[15] The people whose interviews were documented in 1976 include: Nellie Mae Anderson, Dorothy Benson, Kay Frances Brown, Pauline Dawson, Joann Fleming, Ethel Howard, Rachael Jones, Ella Ruth Maddox, Carolyn McDaniels, Raymond Rico Rivers, Rosa Lee Royster, Vanessa Snype, Deborah White, Virginia Wilkerson, and Barbara Williams.

[16] Barbara Williams is homeless and the CIR spent several months attempting to locate her.

[17] Raymond Rico Rivers resides at a local nursing home. According to the nursing staff he suffers from dementia. We attempted to speak with him on three occasions, but were unable to have a meaningful conversation.

then went to Rip's Corner during the late night hours of May 1st. He saw Barbara Williams at Rip's Corner and went to the party at Rachael Jones' apartment with her, her friend Cookie, Defendant Myers, and Defendant Williams. He believed that they arrived around 1:30 am. (Rivers, p. 13-17).

Mr. Rivers stated they all made their way to Rachael Jones' kitchen to get a plate of food when they got to the party. Mr. Rivers stated that Barbara Williams was sitting at the table in the kitchen, and Defendant Williams had a plate of food and was there talking to her. He remembered Defendant Myers getting a plate of food and going into the living room to sit and eat. Mr. Rivers was confident that Defendants Williams and Myers had not left the party, and he remembered seeing them with plates of food. (Rivers, p. 23-25).

After being at the party for approximately 15-20 minutes, Mr. Rivers remembered hearing 4-5 gunshots. At that time, he was still standing in the kitchen eating. His testimony was that Defendant Williams was also in the kitchen, and Defendant Myers was sitting in the living room. (Rivers, p. 30). He stated when the shots were fired some people outside the apartment ran inside. A few minutes later, he and Defendant Williams walked out the front door to see what was going on. Later, when the police arrived, people from the party walked down to see what was going on. (Rivers, p. 32-35). He was present when both defendants were arrested. (Rivers, p. 35-36); Depositions\Rico Rivers.pdf

iii. Virginia Wilkerson

Virginia Wilkerson was deposed by the prosecutor.[18] She lived in the apartment building next to Victim Williams and her front door faced the front door of Victim Williams' apartment. During her deposition, Ms. Wilkerson testified that she and the other women on the street were upset by Victim Williams' death because she was like a sister to them, but she was also confrontational with the prosecutor during her deposition because she could not understand how Defendants Myers and Williams could be involved in Victim Williams' death. (Wilkerson, p. 18-19, 27).

Ms. Wilkerson remembered Defendant Williams, Defendant Myers, Barbara Williams, Rico Rivers, and another woman coming to the party shortly after 1:00 am. (Wilkerson, p. 9). She saw them in the kitchen, and Williams' pregnant wife was offered a seat at the kitchen table. (Wilkerson, p. 12). Ms. Wilkerson described a lot of people being at the party; people were in the living room, kitchen, and both bedrooms. (Wilkerson, p. 13). She placed Defendants Myers and Williams in the living room with everyone and stated she had been "in [sic] the floor jiving with Boonie (Defendant Williams) and them." (Wilkerson, p. 18-19). She stated that when someone announced that rescue had arrived, everyone from the party went outside to see what

[18] Virginia Wilkerson is deceased.

was going on, including Defendants Williams and Myers. (Wilkerson, p. 16-17). Depositions\Virginia Wilkerson.pdf

VI. TRIAL AND POST-CONVICTION PROCEEDINGS

The State of Florida indicted both men for first-degree murder and attempted murder, and sought the death penalty. The defendants were arrested on May 2, 1976, and their first trial commenced on July 22, 1976, and ended in a mistrial. The second trial began on September 1, 1976, lasted a total of two days, and resulted in convictions. At the second trial, the State called six witnesses: Nina Marshall (victim), Officer John Zipperer (arrived on scene), Dr. Peter Lipkovic (medical examiner), Dr. Sam Stephenson (Marshall's surgeon), Detective Richard Bowen (investigating detective), and Harold Torrence (transported Victim Marshall to ER). Additionally, the State entered nine photographs of the scene into evidence.

After finding the defendants guilty, the jury recommended life in prison for both men, yet the trial court overrode the jury's recommendation and sentenced Defendant Williams to death and Defendant Myers to life. Direct appeals were filed on behalf of both men, and Defendant Williams' case was reviewed by the Florida Supreme Court. The Florida Supreme Court held that there were no aggravating factors to support the death sentence and reversed the sentence to life. Defendant Myers' judgment and sentence was affirmed on appeal.

Attorney Margaret Good-Earnest represented Defendant Williams on direct appeal.[19] She had spoken to both defendants on several occasions during her representation and had visited Defendant Williams on death row. Both men consistently maintained their innocence during her representation. They told her that they were down the street at the birthday party and that they were not the shooter(s). Additionally, Ms. Good-Earnest recalled speaking to Jim Harrison, who was Defendant Williams' trial attorney. Harrison told her that he had represented Defendant Williams on several occasions and that Defendant Williams had always been truthful with him. Harrison shared that he had "point blank" asked Defendant Williams if he was involved and Defendant Williams told Harrison that he was not. Mr. Harrison told her that he thought Victim Marshall's testimony was not credible and he thought it was important to have the first and last closing arguments, which procedurally he could only get if the defense called no witnesses and did not enter any evidence.[20]

---

[19] Margaret Good-Earnest graduated from Florida State University College of Law in 1975. She was a board certified appellate specialist until her retirement in 2018. Appellate Attorney\M. Good CV.pdf

[20] Historically, the defense was afforded first and last closing arguments, with the State's closing sandwiched in the middle, if the defense failed to call any witnesses or enter any evidence at trial. Trial strategy required counsel to weigh the impact of speaking to the jury last verse presenting evidence for the jury's consideration. The Florida Rules of Criminal Procedure have since changed and do not allow for first and last closing arguments by defense counsel.

Defendants Myers and Williams have filed a number of *pro se* post-conviction motions over the years, always maintaining their innocence. Both filed motions alleging that they only learned that there was evidence that the shooting came from the bedroom window and about the exculpatory 1976 Tallahassee Regional Crime Lab ballistics report upon filing a public records request. In another post-conviction motion, Defendant Myers asserted that the confession to the crime by Nathaniel Lawson (discussed further below) constituted newly discovered evidence. Each post-conviction motion was denied.

VII. CIR INVESTIGATION

Based upon the information and attachments provided in Defendant Myers' letters, Defendant Myers' petition met the criteria for CIR review. Defendant Myers presented a plausible claim of actual innocence and provided or referenced credible evidence that, if confirmed, would substantiate his claims. Therefore, review of the case was initiated.

A. Purported Alibis

Defendants Myers and Williams have consistently maintained, from the evening of May 2, 1976, to the present, that they were at Rachael Jones' birthday party at the time of the shooting. The general offense report ("GOR") corroborates that Defendants Myers and Williams were part of a large group of people who came down the street to the apartment to see why the police were present. (GOR, p. 4); ..\..\..\General Offense Report.pdf Defendant Myers approached the police to say that he lived in the apartment and asked what had happened. Defendant Williams also approached to speak with the police. Police asked Defendant Myers to identify the woman inside, which he readily did, and stated, "My God, it's Baldie." Baldie was the nickname of Victim Williams. (GOR, p. 5). According to Officer O'Bryant, Defendant Myers appeared to be upset when he identified Victim Williams. When asked to describe what he meant, Officer O'Bryant stated that Defendant Myers "appeared to be emotionally distraught, very emotional." (O'Bryant depo, p. 34); ..\..\..\Doyle O'Bryant.pdf That night, the police were able to speak to Rachael Jones and established that a party had indeed taken place down the street at her and Francis Brown's apartment, and that Defendants Myers and Williams were present.

Both defendants were arrested within 30 minutes after the police arrived on the scene. According to Detective Bradley, who arrested Defendant Williams, Defendant Williams was angry about being arrested. (Bradley, p. 15); ..\..\..\John Bradley.pdf Upon being taken into custody Defendant Williams' yelled out to people in the crowd to get the names of the people at the party and told Defendant Myers to contact his attorney.[21] (GOR, p. 5). Officer O'Bryant, who transported Defendant Williams to the jail, stated that Defendant Williams said "that he

[21] This request would have made little sense if Williams knew that Myers had also participated.

was at the party, he's got lots of witnesses to prove he was at the party down the street, and that he was nowhere near the place." (O'Bryant, p. 48). From the very beginning, and over the course of the past 42 years, Defendant Williams has maintained that he was at the birthday party down the street at the time of the shooting.

Shortly after his uncle was arrested, Defendant Myers was arrested and placed in the back of Officer Horne's patrol car.[22] In his sworn deposition, Officer Horne described Myers as "scared, maybe frightened." In describing what he meant, Officer Horne said "I can't explain the look, to me he looked like, I'm not saying he was guilty or anything, I'm saying like maybe he was scared, like, 'These guys are trying to pin something on me,' or you know, 'I'm going to jail,' just like a worried look, like anybody would be." (Horne, p. 49); ..\..\..\Robert Horne.pdf

During Defendant Myers police interview with detectives that morning, Detective Bradley testified that Defendant Myers told him, "I don't have nothing to worry about, I didn't shoot her" and he provided information that he had been at the party. Defendant Myers was then asked if he had fired a gun within the last 24 hours, to which he replied, "No." (Bradley, p. 33-34).

Given this backdrop, the CIR spent several months trying to locate and speak with the alibi witnesses listed on discovery by the defense. Most are now deceased. Most of the women with whom we spoke lived on Morgan Street at the time of the incident and appeared to have warm feelings for Victim Williams, whom they knew as Baldie. They all knew her well and were upset by her murder.

These women did not seem to care much for Victim Marshall, and several told us that they were not happy that Victim Williams was in a relationship with her. Victim Marshall was a known prostitute and drug user, and had a reputation among the people in the neighborhood for ripping off drug dealers. Most never saw Marshall after the shooting, and they tried to avoid her because they did not want to get wrapped up in whatever led to the shooting. No one had anything negative to say about Defendant Myers. A few women recalled that he had recently graduated from high school and they heard that he had received a scholarship to play football in college. No one had particularly good things to say about Defendant Williams. He was described as "in the streets," and a few people mentioned that he had a reputation for selling drugs. Most people acknowledged they knew Defendant Williams but stated they did not spend much time socializing with him.

[22] Defendant Myers' behavior on scene appears inconsistent with guilt. If Defendant Myers had participated in the shooting of Victim Marshall and Victim Williams, as soon as he went inside to identify Victim Williams as the deceased, he would have known that Victim Marshall was not present, had survived and escaped, and yet he and Defendant Williams stayed on scene. If guilty, once his uncle was arrested, he would have known his arrest was imminent, yet he remained, to be arrested ten minutes later.

Although some witnesses had good recall of the events, most of the witnesses we located could not remember the details from 40 years ago. They could remember that Defendants Myers and Williams were at the party, but they were hesitant to rely on their memory for more details. None of the witnesses stated that they had been threatened, coerced, financially rewarded to provide a statement on Defendants Myers or Williams' behalf, or in any way suggested their 1976 statements were untruthful. It was clear they grieved the loss of their friend, most attended her funeral,[23] and during our interviews there was no suggestion that they would have provided a false alibi for Defendants Myers or Williams given their friendship with Victim Williams. When asked how they reconciled their knowledge about Defendants Myers and Williams being at the party with their subsequent convictions, many witnesses stated they simply thought the police must have known something they did not know about the incident.[24]

i. Joann Fleming

Ms. Fleming lived in the apartment next door to Rachael Jones. She was back and forth between her apartment and Rachael Jones' apartment the night of the party. After 40 years, she still has a specific and clear recollection of seeing Defendant Williams at the party when the shots rang out. She was firm in her belief that he was not the shooter. Her recollection of Defendant Myers was less clear, and she stated that she would have to rely on her deposition testimony regarding him.

ii. Vincent Williams

Vincent Williams is the cousin of Defendant Williams and second cousin of Defendant Myers. He was listed as an alibi witness. He graduated from Raines High School in 1973 and is 10 years younger than Defendant Williams. After high school he had odd jobs, was in the Army from 1979-1981, and was in the National Guard for 4 years. He worked in civil service for NAS JAX for 20 years as a jet engine mechanic, and then worked at the Post Office for 7 years. He is now retired.[25]

On the night in question, he said that he had seen Defendant Williams earlier that night, and Defendant Williams mentioned they were going to a surprise party for a friend and invited Mr. Williams to stop by. Mr. Williams said that he was still living at home at the time and was intrigued by Defendant Williams and his fast lifestyle. His parents were trying to keep him out of the streets and did not want him hanging out with his cousin, so his plan was to go by the

[23] Located in the State Attorney Office's file is a copy of the guest book from the funeral of Victim Williams.

[24] Of the original alibi witnesses listed by the defense, we located: Dorothy Benson, Kay Frances Brown, Belinda Bryant, Pauline Dawson, Joann Fleming, Ella Ruth Mattox, Rico Rivers, Vanessa Snype, Deborah White, and Vincent Williams.

[25] Vincent Williams has criminal history. He is a convicted felon for possession of cocaine and worthless checks.

party, hang for a bit, and leave. He was driving a 1968 Dodge, and had to park down the street because cars were parked on both sides of the road.

Mr. Williams said the apartment was on the first floor, and it had a porch area off the front door. He remembered the apartment was small and there were a lot of people inside. He went in and found Defendant Williams to say hello. Defendant Williams was in the kitchen, and Defendant Myers was in the living room. He thinks Myers was eating when he walked in. He said the kitchen was right off the living room, and you could see into the kitchen from the living room. He remembered people drinking and dancing. He did not really know anyone else at the party other than Williams and Myers.

Mr. Williams was present when everyone heard shots fired. He remembers seeing Defendants Myers and Williams in the apartment at that moment. He believes that Williams walked out of the kitchen to the front door, looked outside, and then came back in. Then people kept dancing. He left approximately 15 or 20 minutes later, but he did not see any police cars when he left. He was flattered that he had been invited to the party by Williams, but he did not plan to stay long because he knew his parents would not approve.

He learned a few days later that Defendants Myers and Williams had been arrested. When his father learned that he had been at the party, he was told by his dad that he needed to tell what happened so that they could get to the bottom of it.

Mr. Williams said that he went down to Defendant Williams' attorney's office and told him what he knew. He mentioned that he had sat all day somewhere, maybe the trial, and was never called as a witness. He could not remember ever speaking to detectives or the prosecuting attorney. He did not understand how Defendants Myers and Williams were convicted, but he went on with his own life. He said that he has not been in touch with either defendant in many years.

Even though Mr. Williams is related to both Defendants Myers and Williams, his testimony appeared reliable. For instance, he correctly described the layout of Rachael Jones' apartment, and he provided details that were consistent with details provided by other witnesses. He sought out Defendants Myers and Williams at the party because they were the only people he knew, he knew where they were at the time the shots were fired, and because they are family members he had reason to make mental note of the events.[26]

iii. Geraldine Prey

[26] When Defendant Williams was recently interviewed, he recalled being upset with Vincent that night because "he filled his stomach and left."

Geraldine Prey was dating Defendant Myers at the time of his arrest. She was not present at the time of the shooting but spoke to the people who were at the party once she found out that Defendant Myers had been arrested. Ms. Prey's sister was Virginia Wilkerson, who lived in the apartment across from Victim Williams, and Ms. Prey knew the other women on the block well. She said everyone was talking about what happened. The women were saying that Defendants Myers and Williams were at the party when the shots rang out and the "group" knew they were not the shooters. She remembers speaking to her sister, Rachael Jones, and Francis Brown, but said that it was more than just them, it was "everyone."

She then went to visit Defendant Myers at the "P-farm."[27] He told her that he did not know what happened to Victims Williams and Marshall, and stated he was at the party when the shots were fired. He also told her that the State wanted him to testify against his uncle, but that he could not testify against his uncle because his uncle was with him at the party. Ms. Prey said she felt sorry for Defendant Myers, and stated he was kind and well liked. She never spoke to him after he went to prison.

Ms. Prey said that Victim Williams was well liked by everyone on Morgan Street, and she did not believe that the women would provide an alibi for Defendants Myers or Williams if it were not true. She felt confident that the women would have told the police if they had reason to believe that Defendants Myers and Williams were the shooters.

B. Confessions by Nathaniel Lawson

Attached as an exhibit to Defendant Myers' petition to the CIR was an affidavit by a man named Tony Brown. Mr. Brown's affidavit indicated that a man named Nathaniel Lawson admitted to being the shooter in this case. Additionally, I was contacted by Mr. Ronald Stansell, a childhood friend of Defendant Myers. Mr. Stansell is aware of the claims made by Defendant Myers, and knows other people from the neighborhood who knew Defendants Myers and Williams. Once Mr. Stansell became aware that Defendant Myers' case was being investigated by the CIR, he provided the names of other people who mentioned over the years that Nathaniel Lawson had confessed to them. He provided the name of Leatrice Carter, who told him contemporaneously with the confession that Nathaniel Lawson told her that he was the one who shot Victims Williams and Marshall. He also provided the contact information for James Stepps, and made mention that Mr. Stepps had been a close friend of Nathaniel Lawson prior to

[27] "P-farm" is the nickname given to the Montgomery Correctional Center, a facility located in Duval County to primarily house sentenced inmates (although inmates with pending cases may be housed there as well).

Lawson's death. Additionally, Frank Williams, the brother of Clifford Williams, was interviewed because he had confronted Nathaniel Lawson prior to Lawson's death.[28]

None of the witnesses to Nathaniel Lawson's confession sought any benefit from the information. With the exception of Frank Williams, none of the witnesses had solicited this information. All felt it was in their own best interest to keep the information to themselves, and after Mr. Lawson's death believed the information had no legal significance.

i. Tony Brown

Tony Brown ("Brown") was interviewed on a prison phone call on April 17, 2018. He is currently serving a prison sentence for armed robbery at Sumter Correctional Institution, where Defendant Myers is currently located; his release date is March 30, 2023.[29]

Brown was born in 1957, and grew up in Blodgett homes in Jacksonville with Nathan "Nate" Myers. He had heard that Defendant Myers was running Defendant Williams' pool hall on Davis Street. He was familiar with Defendant Williams, whom he called Boonie. He said Defendant Williams was a known heroin dealer. He stated that he was in prison when this shooting occurred, but he knew both victims and heard that Defendants Myers and Williams had been arrested for shooting them. He had heard Victim Williams was selling drugs for someone on Ashley Street, and Victim Marshall was a known heroin addict and prostitute.

He said that one day, after he had been released from prison and had gotten off work release at Dinsmore, around April 1993, he was hanging out at Deuce's on Pearl Street, and he was approached by Nathaniel Lawson. They started talking. Lawson talked about some of his misdeeds, and Brown talked about some of his, and Lawson told him that "Boonie" and "Hubert Myers" were serving time for a shooting that he had committed. He said that he was paid by Albert Young, who was a known heroin dealer, to shoot up Victim Marshall because she owed him money for drugs.[30] Brown said that he suspected that Lawson probably also got some drugs for the job. He went on to say that Albert Young ran Court F at Blodgett homes.

Lawson also told Brown that he had left the area with Rico Rivers and then went to his sister's

[28]No evidence has been discovered that would suggest the witnesses to Nathaniel Lawson's admissions have any relationship with one another or a close relationship with Defendants Myers or Williams (with the exception of Frank Williams). These individuals grew up in the same neighborhood, knew of one another, and had heard about the shooting. Ron Stansell, a childhood friend of Nathan Myers, was told by Carter and Stepps that Lawson confessed to them. Brown told Myers, while in prison, that Lawson confessed to him. Frank Williams confronted Lawson on behalf of his brother and nephew when rumors surfaced that Lawson was the shooter.

[29] Brown has served prison sentences from 1974-1979, 1980-1993, and 1994-present.

[30] Albert Young was murdered in the 1980s.

apartment in Hilltop.[31] Brown said that Nathaniel Lawson had a bad reputation on the street for being dangerous. He would brag about shooting people and ran with a guy nicknamed Crying Shame, who was also a heroin dealer. Brown told me that he was confident that he would not be the only one Nathaniel Lawson would have said something to about shooting Victims Williams and Marshall, and he tried to direct me to some other people. He told me that Nathaniel Lawson had a sister, and that he used to hang up at a tavern called the Can and Dan. He thought the female owner of the tavern was the sister of Ed Lee, who was also a drug dealer who knew Nathaniel Lawson.

Brown said shortly after he went back to prison he heard Nathaniel Lawson died. He said that he did not tell anyone what Nathaniel Lawson told him because he did not want to put his own life in danger. But, when he got to Sumter Correctional and came across Defendant Myers, he told Defendant Myers what Nathaniel Lawson had said. Defendant Myers asked him to put what he knew into an affidavit, which he agreed to do. Mr. Brown acknowledged that he sees Defendant Myers regularly in prison.

ii. Leatrice Carter

Ms. Carter was interviewed, and said that she and her husband owned a beer and wine tavern at 701 Jefferson Street, on the corner of Beaver Street, from 1977 to 1995. Ms. Carter said that Nathaniel Lawson came by the tavern sometime in the 90s but prior to 1995.[32] She was glad to see him, because she knew him from growing up in the same neighborhood. He said he had just gotten out of prison, and he lifted up his shirt and showed her a long silver gun. She told him that he did not need that around there.

They continued talking and he told her that Defendant Williams was in prison for nothing because he didn't do it. She asked him who did, he told her that he had, and that "no one was mad at him except Dot and Frank." Dot was Defendant Williams' sister and Defendant Myers' mother, and Frank is Defendant Williams' brother and Defendant Myers' uncle. Mr. Lawson did not say anything else about it, nor did he say why he did it, and Ms. Carter did not ask. She did not see him again for some time. Probably within a year of that she had heard that he had passed.

Ms. Carter said that she grew up in an area of Jacksonville called the Black Bottom, and knew both Nathaniel Lawson and Defendant Williams from the neighborhood. Defendant Williams

[31] Mary Ann Hay, sister of Nathaniel Lawson, confirmed that her mother and sister, Pamela, were living in Hilltop apartments in 1976. Ms. Hays said that she doubted that Nathaniel would have shared anything with his mother or sister, and he never shared anything about this event with her.

[32] Ms. Carter may be the person who was referenced by Tony Brown as someone who might have spoken to Nathaniel Lawson (her brother was Ed Lee).

grew up one street over. She knew Defendant Myers as Defendant Williams' nephew, but he was much younger than they were. She had heard that Defendants Myers and Williams were arrested, and the word around the neighborhood was that that were not guilty of what they were accused of doing. She told Ron Stansell contemporaneously about the conversation she had with Nathaniel Lawson. Mr. Stansell confirmed that he was told about this conversation by Ms. Carter many years ago.

iii. Frank Williams

Frank Williams was interviewed. He is the brother of Defendant Williams, and uncle of Defendant Myers. Mr. Williams worked at Maxwell House Coffee for 42 years and is now retired. Mr. Williams said that his sister Dot did not believe that Defendants Myers and Williams were involved in the shooting of Victims Williams and Marshall, and she continued knocking on doors and investigating the incident for years after they were convicted. Dot knew some of the women who lived on Morgan Street, received a call that Victim Williams had been killed, and was present when her son and her brother were arrested. Mr. Williams acknowledged that his brother was rumored to be dealing heroin, although he said that he never personally saw that. He said that his brother had an adverse relationship with the police. He knew his brother had been previously arrested, and on one occasion, while Mr. Williams was driving to work, he saw his brother being put in the back of a patrol car. When he stopped to inquire about what was going on, the police refused to provide him with any information and told him that he needed to "move on."

At some point, it got back to Mr. Williams that Nathaniel Lawson might have been involved in the shooting, so he went to confront him. He said that he had heard on the grapevine that Mr. Lawson was involved. He said that he went looking for Nathaniel Lawson on Jefferson Street, at a place close to the Dew Drop (he could not remember the name of the bar). He told Mr. Lawson that he needed to know what happened, but Mr. Lawson told Mr. Williams that he (Lawson) was "staying out of it" and refused to speak with him further. The next thing he heard was that Nathaniel Lawson was avoiding him because Lawson did not want to have a confrontation.

Mr. Williams said that he had dated Mr. Lawson's sister, Diane, at one point. He would bump into her from time to time. Many years later, Diane told him that her brother was sick and might want to clear his conscience. Mr. Williams went to speak to John L. Thorpe, Diane's husband, to see if he could arrange a meeting between him and Mr. Lawson. Thorpe was a known drug dealer, and was someone who had known Defendant Williams. Thorpe arranged

for Mr. Williams to meet Nathaniel Lawson. Mr. Lawson wanted to meet in public, so Mr. Williams and Mr. Lawson met on the corner across the street from Daysprings Baptist Church. Nathaniel Lawson told Mr. Williams that he was the shooter and told him that "she was stealing from me and I had to send a message." Mr. Williams could not remember if Mr. Lawson specifically mentioned one of the women by name. Mr. Williams told Mr. Lawson that he had messed up the lives of Defendants Myers and Williams and asked him what he was going to do? Mr. Lawson said there was nothing he could do but send them some money. He told Mr. Williams that he had given Dot some money for them.

Mr. Williams came to the meeting directly from work and had his Maxwell House uniform on. He remembers Mr. Lawson telling him that he wished he had gotten a job like Mr. Williams and had not been in the streets. After this meeting, he asked Dot if she had gotten money from Mr. Lawson, which Dot confirmed and said she had sent it to the defendants. Dot is now deceased.

Mr. Williams could not remember exactly when this conversation took place. In trying to remember the date, he said he got married in 1987 and that it was after that. He mentioned that he had training in Texas in 1989 and that it was after that. He mentioned that Mr. Thorpe and Nathaniel Lawson's sister Diane are also now deceased.

When asked why he did not go to the authorities with the confession of Nathaniel Lawson, Mr. Williams said "it was my word against Nathaniel Lawson's word. The people downtown already convicted my brother, they weren't going to do anything with that." He said he hoped Nathaniel Lawson would go to the authorities, but he refused.

Mr. Williams mentioned that Defendant Williams kept pressuring him to do something, and kept sending him depositions and documents. He said that he reached out to attorney William Lassiter, and asked him to look into the case. Mr. Lassiter got back to him and told him that he did not think anything could be done.

Mr. Williams said he was not at the party and did not know what happened, but Defendants Myers and Williams both told him that they did not do it, and Vincent Williams said he was with them at the time.

iv. James Stepps

James Stepps was a friend of Nathaniel Lawson. He currently works at the Publix Warehouse. He said they grew up together and were a couple years apart in age. They went to the same schools and ran around as children together. He lived at 1940 Mars Street and Nathaniel Lawson lived in Venus and Mars Court. He said that they remained friends through the years until Mr. Lawson's death. Mr. Stepps said he thought he picked Nathaniel Lawson up from the hospital on a Wednesday and he passed away on Friday. He sang at the funeral.

Not too long before Nathaniel Lawson died, Mr. Stepps visited Lawson at his apartment. He said Nathaniel Lawson was living in an upstairs apartment off Moncrief. They were drinking and talking, and Lawson mentioned wanting to send some money to Boonie. He told Mr. Stepps that he had killed the woman that Boonie was in prison for. He then said, "What can I do? I can't turn myself in." Mr. Stepps said he did not ask any questions and tried to change the subject because he did not want to know anything else. This was the only time Nathaniel Lawson mentioned it. Because he had known Lawson for so long, he had no reason to disbelieve what he was telling him and he believed it was the truth. He said that because he believed Lawson was telling him this in confidence that he would not have come forward if Lawson were still alive. He did not know Victim Williams or Victim Marshall.

He said Nathaniel Lawson had a reputation for being violent and he had personally witnessed him being violent. He said one time he (Stepps) was fist fighting some guys. He was from 6th and Davis and these guys were from 26th Street. Nathaniel Lawson came to Mr. Stepps "rescue" and pulled out a "pirate pistol," a long barreled gun, and shot a guy in the leg.

Mr. Stepps did not personally know Defendant Williams, but he knew his brother Larry. He also knew Defendant Myers who is closer to his own age. They were acquaintances, not close friends. I asked Mr. Stepps if he knew Albert Young (who was the man mentioned by Tony Brown). He said that he and "Al" went to school together. He told me that Albert Young was a known drug dealer and a violent guy. He was sure that Nathaniel Lawson knew Albert Young since they were from the same area. He said that Albert Young was murder many years ago.

C. Confirmation of Nathaniel Lawson at the Scene

The original documents contained in the file confirm that Nathaniel Lawson was present at the scene of the shooting on May 2, 1976. In the general offense report there is a notation that Detectives Bowen and Bradley observed a white pickup truck leaving the scene at the same time that Defendants Williams and Myers left to be transported to the sheriff's office. The pickup truck was stopped by the police and two black females and two black males were in the car. It appears the truck was pulled over so that the vehicle driven by the wife of Defendant Williams could be searched, and the report states, "The driver of this vehicle was identified as Barbara Williams who is the wife of Clifford Williams. One of the B/M occupants was identified as Raymond Rico Rivers and the remaining two occupants were unidentified. The vehicle and passengers were checked and released." (GOR, p. 6). The police report confirms that four people left the scene in a truck driven by Barbara Williams, including Rico Rivers, one female occupant, and one male occupant who was not identified.

In Barbara Williams' 1976 deposition, she was asked by the prosecutor what time she left the area, to which Mrs. Williams replied, "Just like I said, it was before day that morning. The

wagon had come, and they went in there and got the body out." Question: "Who did you leave the party with when you left around 4:00 in the morning?" Answer: "Rosetta Simmon (Cookie), Raymond (Rico Rivers), and Nathan Lawson." Question: "Larson?" Answer: "Lawson." (Williams, p. 40); ..\..\..\Barbara Williams.pdf When interviewed as part of the current investigation, Tony Brown stated that Lawson had told him that he left the scene with Rico Rivers which is consistent with the testimony of Mrs. Williams and the general offense report.

D. Polygraph of Defendant Myers

Defendant Myers was asked if he would be willing to submit to a polygraph as a component of the CIR investigation of his case, and he agreed.[33] On July 20, 2018, he was brought to Jacksonville, and the Jacksonville Sheriff's Office administered the polygraph examination. Defendant Myers, pursuant to protocol, was asked a series of three questions: Did you shoot either of those women? Did you shoot either of those women in May of 1976? Did you shoot either of those women at 1550 Morgan Street, Apt. 1? Defendant Myers answered "No" to all three questions, and according to the examiner he was not deceptive in his answers. The detective is an experienced polygraphist and told us that she had never previously had a defendant "pass" and believed Defendant Myers was being truthful. ..\..\..\Polygraph results.pdf

E. The "Two Shooters" Theory

The only evidence linking Defendants Myers and Williams to the crime was the testimony of Victim Marshall. Originally, Victim Marshall provided a written statement to detectives on May 4, 1976, while she was in the hospital recovering from her injuries. At that time she stated that when she woke up she was shot, so she lay over Victim Williams and played dead. She said that is when she could identify the shooters. They then left the apartment, locking the deadbolt on the way out. After they left, she got up, unlocked the door, and saw them running down the street. In her written statement she said $100.00 of rent money Victim Williams owed to Defendant Williams was the motive for the shooting. Nina written statement.pdf

The investigating detectives interviewed Victim Marshall several times during their investigation. Her account of the event changed significantly over time, and more details were mentioned in her subsequent versions. Victim Marshall testified three times, once in a deposition and twice at trial. The core of Victim Marshall's testimony was consistent from deposition to trial. She testified that she and Victim Williams went to bed watching a movie, with Victim Williams laying on her right side behind Victim Marshall who was also propped up

[33] Defendant Williams also agreed to submit to a polygraph. During the pretest phase of the examination, it was determined that he was unable to cognitively perform the test and the test was terminated by the polygraphist out of concern that the test result would not be valid.

on her right side. Victim Williams was closest to the window and Victim Marshall was closest to the bedroom door. At some point in the night, she heard a clicking sound that she thought was the front door, she drifted back to sleep and awoke to a burning sensation in her neck. She saw two men standing in front of the television in her bedroom, saw sparks coming from two firearms, and shooting continued. The men emptied the guns (she heard clicking sounds), walked over her as she lay on the bedroom floor, and walked out the front door of the apartment. She identified the men as Defendants Myers and Williams.

While the core story remained consistent, the details about the night of the shooting changed each time Victim Marshall relayed what happened. Victim Marshall was unable to provide a consistent version of her activities prior to the shooting or a consistent version of what took place during the shooting.[34] For instance, she provided several different accounts of her movement during the shooting. She originally stated, in her written statement, that she lay over Victim Williams and played dead until the shooting stopped. During her deposition, she testified that she rolled off the bed, fell between the nightstand and the bed, tried to get back on the bed, lay on the bed for a moment, and then fell off again. In her deposition, she testified that she saw who the shooters were when she tried to get back on the bed. The deposition account is demonstrably not accurate because crime scene photos show the gap between the bed and nightstand was only a few inches. ..\..\..\..\Pictures\Nightstand(2).jpg; (See Exhibit D). During deposition, she also testified that when she left the apartment she was able to see the defendants in the street walking toward the party.

During her trial testimony, Victim Marshall described Victim Williams grabbing the back of her nightgown while she was falling off the bed. She testified she fell partially out of bed onto the top of the nightstand, with part of her chest and the right side of her face on the nightstand.

---

[34] For instance, according to Victim Marshall her evening included eating dinner with Victim Williams at 11:00 pm, going to get a friend from a local bar and then bringing her back to the apartment for 10 minutes and returning her to the bar at 11:00 pm, babysitting a 6-year-old child, taking a bath, then it was taking a shower, getting in bed for 15 minutes then getting out of bed to take the child to her grandmother's at 11:15 pm. Victim Marshall stated that the child they were babysitting on the night of the shooting was watching a Charlie Brown special in the living room shortly before they took her home at 11:15 pm. Charlie Brown children's specials did not air at 11 o'clock at night, and a search of the TV Guide showed no Charlie Brown special on May 1, 1976. She stated that she got in bed with Victim Williams at 11:30 pm to watch the late night movie. She rolled 4 joints of marijuana, two of which were smoked by Victim Williams and two of which were smoked by her. She testified that the marijuana did not get her high. She could not remember any of the details of the late night movie; she did not remember the title, the actors, or the story line.

She also testified that her father was Mose Williams, and that he lived at 904 Mose Avenue, an address that does not appear to exist. She stated that she had been married to Eddie Lee Dyals, and had two children with him, and then was married to Felton Marshall, and had a child with him. Mr. Dyals is deceased but his family was not familiar with Victim Marshall and knew nothing about the children. Mr. Marshall acknowledged that he and Victim Marshall dated briefly but denied that they had married or had a child together.

She testified she fell off the bed and tried to get back on the bed three times during the shooting. At trial she stated that she could see two muzzle flashes, coming from different directions, although see could not see the guns. She described the guns as being wrapped in pillows or blankets. She placed Defendant Myers to the left of the television and closest to the foot of the bed, and Defendant Williams to the right of the television and closest to the bedroom closet door. Lastly, she placed herself lying in the middle of the bedroom floor, where she was stepped over by both men as they left. She testified they then closed the bedroom door behind them, and locked the deadbolt on the front door with a key. Victim Marshall said she lay on the floor a few minutes, but when she left the apartment she could see Myers and Williams in the street headed toward the party.

Like her deposition testimony, Victim Marshall's trial testimony was inconsistent with the physical evidence. Scene photos show that nothing on top of the nightstand was disturbed and showed no sign of struggle or fall. ..\..\..\..\Pictures\Nightstand.jpg; (See Exhibit E). Scene photos also refute Victim Marshall's testimony that the assailants closed the bedroom door on their way out because clothing was draped over the top of the bedroom door that would have prevented the door from fully closing. ..\..\..\..\Pictures\Bedroom door.jpg; (See Exhibit F). Scene photos depicting a pool of blood in the bedroom doorway also raise serious questions about whether the position of her body on the floor would have prevented the door from closing at all. ..\..\..\..\Pictures\Nightstand with bed.jpg; (See Exhibit G).

Counsel for Defendants Myers and Williams never challenged Victim Marshall on these issues and never tested the reliability of her statements through impeaching evidence. No lawyer questioned her in deposition or at trial about the hole in the screen, the broken window pane, the glass in the bed, the holes in the curtains, or the results of the ballistics analysis, although much was made of her prior drug use and criminal history.

Review of the available physical evidence, moreover, shows that no independent verification or corroboration of the salient details of Victim Marshall's account exist, save being shot and the television being on. We unfortunately were unable to interview Marshall because she died in 2001.

i. Evidence of a Single Shooter

1. Ballistics

Contrary to the sworn testimony of Victim Marshall that she saw two men shooting two guns with two muzzles flashing, the scene examination, forensic analysis report, interpretation of the wound dynamics as derived from medical testimony and the forensic reconstruction, indicate only one firearm was used. Victim Marshall testified that she heard the guns clicking which

indicated to her that both men had emptied their weapons, yet a total of six bullets were located.

It is appreciated this was a dynamic event, but it is also noted the two victims were in close proximity to one another, within the confines of a small bedroom. Five bullets were recovered: three from the scene, and two from the body of Victim Williams. Additionally a "fragment" was recovered from Victim Williams, and a "damaged bullet" from Victim Marshall.

A comparison of the documented firearms evidence and medical reporting indicate one bullet perforated, meaning entered and exited, the arm of Victim Williams (GSW #2) and another bullet entered the arm and fragmented into two pieces with the larger piece exiting her forearm (GSW #3). A portion of a bullet also struck Victim Marshall in the left arm and was recovered. The "damaged bullet," as described by the surgeon, who recovered it from Victim Marshall, was most likely the fragment associated with Victim Williams' forearm exit wound. The fragment recovered in Victim Williams' left wrist is most likely the rest of the sixth bullet fired in this event. No additional fragments or portions were reported recovered from the scene in any document reviewed.

It should also be noted the fragment removed from Victim Williams' wrist was described as "one deformed metallic fragment" in FDLE reporting. Additionally, the "damaged bullet" recovered from Victim Marshall was noted as "one fired .38 caliber damaged lead bullet." The forensic examiner further described this evidence upon examination as "bullet portions" with "some evidence of a relationship" to the actual bullets recovered. It is appreciated forensically these two bullet portions were too damaged to be *conclusively* associated with the five other bullets; however, it should be considered likely given the absence of credible data to suggest otherwise given the firearms evidence recovered, wound dynamics, and the context of the scene. FDLE report.pdf; (See Exhibit C).

Mr. Peter Lardizabal, retired FDLE firearms and toolmark analyst and current JSO employee, reviewed the original ballistics examination report authored in this case, and agreed that there was no evidence to suggest that more than one firearm was used, based upon the items collected and submitted for comparison in this case.[35] When the original homicide detectives were interviewed by the CIR, neither remembered having received a copy of the ballistics analysis, and both agreed that the findings were significant.[36]

2. Eyewitness Account that a Single Shooter was Outside

[35] Peter Lardizabal began his employment with FDLE in 1980. He has testified as an expert witness in firearms and tool mark identification over 360 times.

[36] Both of these gentlemen are now retired from JSO, and both readily cooperated with the CIR.

In 1976, Christopher Snype told police that his neighbor, Tony Gordon, (who lived directly across the street from the victims) approached him while he and his friend, Major Skylark, were sitting on Snype's mother's car around 4:00 am on May 2, 1976. According to Snype, Gordon told them that he was sitting in his living room when he heard the first shot fired, he then looked out his window, and saw a black man in black clothing standing at the apartment window firing shots.[37] The shooter then ran around the back of the apartment. Christopher Snype and Major Skylark are deceased, so the CIU was unable to interview them.

The police interviewed Tony Gordon in 1976, and he denied witnessing the shooting. Notably, the State asked Gordon to submit to a polygraph on the matter which was conducted on July 14, 1976. Mr. Gordon told the polygraphist that he had been sitting in his living room watching "Movies til Dawn" on the television and could hear there was a party taking place down the street. He claimed that he retired to his bedroom prior to the shooting and denied witnessing the shooting. He acknowledged going outside after the police arrived to see what had taken place. He watched Defendants Williams and Myers get arrested and said "that the people in the street began to harass and verbally abuse the police officers."

The polygraphist concluded that Gordon was not truthful when answering questions during the polygraph examination. Gordon said that he did not want to be involved because he had to "live on Morgan Street and he did not feel that he or his family could be protected." (Report, p. 3). Polygraph.pdf

Gordon is alive and still resides in the same house with his wife across the street from the apartment building where this murder took place. The CIR interviewed Mr. Gordon on two occasions. Mr. Gordon was reluctant to speak with us and made it clear that he did not want to be involved, maintaining the same concerns he expressed in 1976. He said that he had to live on Morgan Street and that "snitches end up in ditches." He told us that he had gotten to his current age "by minding his own business." Gordon denied witnessing the shooting, but despite his reservations, he did acknowledge hearing shots around 2:00 am. He said the glass in the front bedroom window, across the street, was broken and that he knew it had gotten broken that night. He commented that it remained broken for a while after this incident. He also acknowledged seeing Christopher Snype that night, said Snype leaned up against his fence, and was outside at the time of the shooting.

Gordon recalled that everyone came down from the party to see what was going on after the shooting. He saw Defendants Myers and Williams get arrested. He heard that Victim Marshall

[37] The police noted in the general offense report that Defendant Myers was arrested wearing black jeans and a white T-shirt. No notation was made of Defendant Williams' clothing.

identified them as the shooters, but said all the people at the party were saying that Defendants Myers and Williams were with them at the party at the time they heard shots.

While denied by Gordon, additional evidence corroborated Snype's statement. Mr. Harold Torrence drove Victim Marshall to the hospital and returned to the scene until about 4:00 am that morning. Torrence testified during his deposition that while at the scene, a purported eye-witness to the shooting described a single shooter shooting into the apartment from outside the victims' window. Specifically, Torrence testified that "there was one dude who said he saw the whole thing but he wouldn't say anything." Torrence said he did not know that person, but "he said he saw the whole thing, I'd know him if I see him again, but he say [sic] he saw the whole thing, the shots and all. He say [sic] he saw her but he say he was outside the window and the girl said it was inside. So, I couldn't say, you know which was telling the truth." "About three or four people said it come [sic] from outside the window." (Torrence, p. 11); ..\..\..\Harold Torrence.pdf

This was a significant piece of information, but defense counsel never followed up or offered the jury this information. Neither defense attorney questioned Mr. Torrence about how the man looked, what he specifically said, who else was present, where he might live, or who the other people were who mentioned that the shooting came from outside the window. It was mentioned by Detective Bradley during his deposition that the police had received information that someone was seen firing a weapon in front of the window, yet there were no follow up questions by defense counsel about this information. (Bradley, p. 51). Additionally nothing in the prosecution file suggest that defense counsel deposed Tony Gordon or conducted any investigative follow-up to identify the purported eye-witness.

Mr. Torrence was located and interviewed during the CIR investigation. After 40 years, he still has a vivid recollection of driving Victim Marshall to the hospital. He asked her several times who shot her. Victim Marshall asked him not to talk and did not respond to his inquiries about who shot her. Mr. Torrence does not have a present recollection of returning to the scene after dropping Marshall off at the hospital, so he was not able to provide any information in addition to his deposition testimony.

Christopher Snype, Snype's written statement, Major Skylark, and the fact that Gordon failed a polygraph was not listed on the State's discovery.

ii. Henry Curtis

In the State Attorney file was a transcript of a statement provided by Henry Curtis. This statement was given by Mr. Curtis on January 2, 1997, while he was serving prison time in a facility where Defendant Williams was located. The statement was attached to Defendant Williams' 3.850 motion. In this statement, Mr. Curtis claimed to have known Victim Williams,

Victim Marshall, Defendant Williams, and Defendant Myers. He stated that he was a heroin addict for 15 years, which is how he knew these individuals. He said that he had contact with Victim Marshall after she was shot. On one occasion, she told him that she was shot by Defendant Williams and Defendant Myers and that she played dead. (Curtis, p. 5). On another occasion, she told him that she did not know who shot her because she was asleep. (Curtis, p. 7, 15). He said that Victim Marshall was using heroin during the pendency of the trial, and that she had come to his house to use drugs. (Curtis, p. 11, 12, 13-14). He said that Victim Marshall had a reputation for pinching drugs off the bags and ripping off dealers. (Curtis, p. 11-12); ..\..\..\Affidavit of Henry Curtis.pdf Mr. Curtis is now deceased so we were unable to interview him.

F. Inside vs. Outside

No evidence, other than Victim Marshall's testimony, supports a shooting from inside. Rather, the physical evidence indicates otherwise. The general offense report and deposition testimony of the investigating detectives show that they originally believed the shooting occurred from outside and through the window, and they grappled with reconciling the physical evidence with the witness account throughout the investigation.

The general offense report documents the physical evidence present at the scene--the hole in the window and screen, the holes in the curtain, the bullet strike on the window frame--but ultimately the detectives surmised that the physical evidence was staged to look like the shots came from the window. In reconciling the discrepancies, they concluded, "From physical evidence at the scene it appears as though the suspects in this case intended to make it look as though the victims had been shot by someone from the bedroom window . . .." (GOR, p. 16).

Even during his deposition, Detective Bradley appeared to struggle to exclude the window as the entry point for the shooting. In addition to the hole in the screen and broken window pane, Detective Bradley mentioned that glass was found in the bed of the victims. Further, he stated he dusted the window for prints, but did not find any. When asked why he did not dust the doors for prints, he stated that there was wet blood on the front door, which would not have allowed for dusting, but then went on to state, "I had checked the window on the outside *where the shots were fired*." (Bradley, p. 20)(emphasis added). While the initial on-site theory was that shots were fired from outside the window, the direction of the investigation changed once Victim Marshall identified the defendants and provided her account of what happened. Given the darkness and the curtains, Victim Marshall would have been physically unable to identify the shooter(s) if the shooting occurred outside the apartment window.

Expected and routine corroboration of Victim Marshall's account was not present. No footprints or smears were located in the blood on the bedroom floor; no bullet strikes exist on

the interior walls in the bedroom; no burnt or singed fibers from a pillow or blanket that purportedly wrapped the guns were present; no blankets or pillows with evidence of gunshot residue/soot were found; no bullet entrance wounds on the front sides of the victims existed, which would have been the side of their bodies facing the bedroom door; no forensic evidence of two types of bullets was found; and no additional bullets, apart from the six that forensic science says came from the same gun, were located.

The deadbolted front door also raises questions. The locked front door, in light of all the other evidence, appears more supportive of an outside shooting than two fleeing assailants with the presence of mind and manual dexterity to lock the door with a key behind them as they fled.

i. Wound path

As previously noted, shooting events are dynamic. Human beings are capable of movement, and here, movement on behalf of both women was documented. Both women moved away from the window during the shooting. Victim Williams moved from her original position on the bed, toward the edge of the bed away from the wall and into the space originally occupied by Victim Marshall, where she came to a final rest. Victim Marshall moved off the bed to the floor. Had the shooting occurred from outside the apartment window, the women would have been moving away from the origination point. If the shooting occurred from the foot of the bed, the women would have been moving toward the origination point.

Equally important are the wound tracks themselves. None of the entrance wounds are on the front side of the victims, the side that would have been facing interior shooters. The shooters had the benefit of surprise according to Victim Marshall who described waking to a "burning sensation" in her neck. Her wounds, though, were on the left side of her neck and not the front. If laying on her right side as she described, her left shoulder and left arm would have possibly provided obstruction of her neck from a position taken at the foot of the bed. Further, no bullet holes to the pillow or sheets were documented to substantiate a perforating neck wound to Victim Marshall, occurring while she slept on her right hand side, originating from the foot of the bed. Additionally, no evidence showed anyone being shot at close range in this small bedroom and tight space. There were no powder burns or stippling noted on the victims, the clothing of the victims, or the bed sheets.

Victim Marshall testified that she fell asleep propped up on her right side watching television, with Victim Williams also on her right side, behind Marshall and closest to the wall and window. Victim Williams sustained four entrance wounds, while Victim Marshall sustained three. All of the entrance wounds on Victim Williams are on the back side of her body. The entrance wounds to Victim Marshall are on the left side of her body. Seven entrance wounds are present, and as discussed above, only six bullets were located. One or more of the entrance

wounds appear to have been caused, therefore, by a bullet that struck one victim and continued through to the second victim. Victim Williams sustained two perforating, through and through, injuries. One through and through was the bullet that struck Victim Williams at the back of her elbow and fractured with a large portion exiting from her forearm area and a small portion remaining in her arm (GSW #3). A damaged portion of a bullet struck the left arm of Victim Marshall and was recovered from her. Further, the fragment found in the body of Victim Marshall had to have struck an intervening object, to have become fragmented prior to entering her arm, consistent with being the large fragment from the bullet that fragmented after striking Victim Williams. No other fragments were recovered. Additionally, there are no intervening objects observed in the evidence photographs of the scene from the direction of the foot of the bed toward the area of the bed where the victims were sleeping. (See Exhibits L, P, Q).

Victim Williams moved from her original location on the bed and came to her final resting place after being shot in the back of the head. That shot hit the back of her neck and traveled slightly upward, lodging toward her forehead. The medical examiner testified that this injury rendered Victim Williams unconscious immediately and there would have been no meaningful movement after this injury**.** (Dr. Lipkovic, TT, p. 5, 7); ME testimony.pdf The CIR consulted with Dr. Valerie Rao, Chief Medical Examiner, to discuss wound paths with regard to Victim Williams. Dr. Rao was not able to indicate the sequence of the gunshot wounds, but she agreed that the wound to the head was immediately incapacitating and there would have been no conscious movement after receiving that injury. She stated that it was unlikely that Victim Williams would have been able to put pressure on her left arm after the bullet that struck the forearm partially shattered the radius bone (GSW #3). She also pointed out that the entrance wound to the back of the upper arm associated with the bullet that lodged into the shoulder joint (GSW #1) was irregular and not circular, which she opined was indicative of the bullet striking another object prior to entering the arm. (See Exhibit N). This is consistent with the bullet having struck an intervening object, possibly the aluminum screen and glass, or the bullet strike documented on the window frame. There is no evidence of an intervening object from the direction of the foot of the bed, and no bullet strike was documented in the interior of the room.

Computer modeling utilizing the wound paths documented by the medical examiner, and verified by Dr. Rao, demonstrated that the bullet path from Victim Williams' head wound (GSW #4) tracks back to the bedroom window where the hole exists in the screen and window. The same computer modeling for the injuries to the back of Victim Williams' arm demonstrated that they could also be tracked to the bedroom window. Based upon this information, the bedroom window could not be excluded as the entry source, while the angles required for all shots to hit the back of Victim Williams' body from the direction of the television are

implausible. Even without the evidentiary support of the other physical evidence, wound tracks alone demonstrate that a shooting position from in front of the television at the foot of the bed is an improbable shooting scenario. (See Appendix II).

ii. Screen

A metal screen on the exterior of the glass pane of the bedroom window was present. Evidence photos depict that the screen had a hole in the bottom right hand corner. Behind the screen, a large piece of the glass pane was missing. The edges of the hole where the glass is missing were jagged and irregular. The investigating detective described the aluminum mesh around the hole as pointing inward toward the bedroom, showing that an object traveled from the exterior through the screen and window to the inside, not from the inside to the outside. A blown-up evidence photograph of the window reveals the hole in the screen is not circular, but is oblong and several inches in size. (See Exhibit I).

The State Attorney's Office hired Knox and Associates to provide a crime scene analysis and reconstruction of this case. Mike Knox, in conjunction with Tom Brady, reviewed the entire case file as part of their analysis.[38] As part of the reconstruction, Mr. Knox test fired .38 caliber ammunition through an aluminum metal screen purchased at a salvage yard. Mr. Knox was able to replicate the damage to the screen by firing six shots with a .38 caliber revolver at contact range. Through this experiment, the CIR was able to validate that all six shots could be fired from outside the window into the bedroom. In conjunction with the additional physical evidence, this is the credible shooting position. ..\..\..\..\Pictures\Window.jpg; (See Exhibits H, I, J).

iii. Blood Evidence

The door of the bedroom opened inward and to the left. There is a shallow "hallway" created by the wall and bedroom door to the left and the closet wall on the right. Victim Marshall testified that she lay on the floor and played dead while the shooters emptied their guns. She stated that she could hear the clicking sounds of the guns which was how she knew the guns were emptied. She then stated that both men stepped over her body to exit the bedroom. Victim Marshall said that she lay on the floor for three minutes after the men left to make sure that they were gone. (GOR report, p. 16). A significant amount of blood collected into a puddle on the floor in the bedroom doorway area, corroborating Victim Marshall's testimony that she had laid on the floor for some period of time before leaving through the front door. (See Exhibit G).

[38] Knox CV.pdf; Brady CV.pdf

If Victim Marshall's head had come to a rest where the large pool of blood was located on the bedroom floor, as depicted in the crime scene photographs, and if one assumes that her legs are inside the room, the ability of two men to step over her body would have been difficult given the confines of the space without stepping in or tracking blood.

She testified she went out of the same front door the men went out. There was another exterior door, a kitchen door, that was not utilized. Once outside, she said she saw the men in the street down toward the party.[39] The birthday party was approximately 150 feet down the street, so it is unlikely that two men, having just shot two people, would still be lingering in the street three minutes after the shooting. A plausible reconciliation of the conflicts in the available evidence is that Victim Marshall saw Defendants Williams and Myers when they stepped outside to see what happened, a fact many alibi witnesses recalled.

iv. Room Arrangement

Victim Marshall said the shooters came into her bedroom and positioned themselves at the foot of the bed in front of the television which was on a dresser; Defendant Myers to the left and Defendant Williams to the right of the television. ..\..\..\..\Pictures\Area to Right of Television.jpg; (See Exhibits P, Q). Given the arrangement of the bedroom, this positioning is highly unlikely, if not impossible. (See Exhibit O). The bedroom was very small--approximately 9 feet by 12 feet--and with the room's contents there would have been very little room for two grown men. Further, the bedroom door was located directly across from the head of the bed, and not the foot of the bed. (See Exhibit K). Further, this shooting position is not consistent with the documented wound paths.

v. Sound Experiment

The CIR arranged for a second test to determine the possibility that the party-goers at 1604 Morgan Street, Apartment #2, would have been able to hear shots fired from inside the bedroom located at 1550 Morgan Street, Apartment #1, and hear shots fired from outside the window of the same bedroom. This test took place on November 14, 2108. Two shots were fired from a .38 caliber revolver inside the bedroom located at 1550 Morgan Street.[40] Two shots were

[39] Like other aspects of her testimony, this detail was inconsistent. On one occasion Victim Marshall stated that she saw both men walking west on Morgan Street toward the direction where the party was being held, and then went to the next door apartment to knock on the door to attempt to get help. (GOR report, p. 16). At trial, Victim Marshall testified that when she came out the front door of the apartment that Defendants Williams and Myers were approximately 40 feet away. (TTII, p. 196-197). During her deposition, she stated she went to the next door apartment, knocked on the door, heard children inside but no one would answer the door. She then walked to the front of the building and saw Defendants Williams and Myers walking down the street. She then laid down on the ground until they left the area.

[40] The front bedroom window was cracked as it appeared in the original scene photographs.

fired from the same .38 caliber revolver outside the bedroom window. Audio equipment was positioned outside the front door of 1604 Morgan Street, Apartment #2 (the party location).

When a .38 caliber revolver was fired inside the bedroom, one could hear the sound when standing immediately outside the apartment building. Further down the street at the party location it was faint and barely discernable, likely even less so with a noisy crowd and music playing. Conversely, shots fired from outside the bedroom window were quite audible from the front door of 1604 Morgan Street, Apartment #2, and six shots, fired in succession, likely would have been loud and distinct enough to get the attention of the people at the party.

The results of this experiment provide further corroboration of the reliability of the accounts of the party-goers and defendants who claimed they heard loud gunfire. Additionally, the experiment supports the position that shots were fired from outside the bedroom to be discernable by the individuals at the party location and not from inside the bedroom.

vi. Statement of Victim Marshall

The CIR was unable to develop any information to address Victim Marshall's identification of the defendants as the shooters. An explanation for her testimony would be mere speculation. Due to her death in 2001 she was unavailable to be interviewed. Months were spent attempting to locate family or acquaintances of Victim Marshall with no success. It is unknown if Victim Marshall perceived that her testimony was an accurate recitation of the event or if she had a motive to fabricate her testimony. While urged by defense counsel to find her not credible, the jury accepted her version of events, although without the benefit of the physical evidence. The detectives and prosecutor also believed her version of events. Yet, Victim Marshall's was problematic for two reasons: 1) it changed over time, and 2) it was not consistent with the physical evidence.

This was clearly a traumatic event. Victim Marshall was asleep, the bedroom was dark or dimly lit at best, she was shot three times and bleeding profusely, she believed her romantic partner had been shot and killed, this event happened over a matter of seconds, and this would have been frightening and disconcerting. Victim Marshall acknowledged that she was a heroin addict that started using methadone two or three days prior to this event. She denied using heroin this particular day, but acknowledged using methadone and smoking marijuana prior to going to bed. Further, Victim Marshall was immersed in the criminal culture of the time. These factors had the potential to shape, either intentionally or unintentionally, the inaccurate account of Victim Marshall.

Here, the general offense report, authored two months after the shooting, makes mention of the fact that the detectives "conducted several interviews" with Victim Marshall. The report does not chronical the interviews by date and time, but simply provides a summary of her collective

statements. The reader is unable to determine how many times the detectives discussed background information, the events themselves, the topic of motive, or anything else with Victim Marshall. Likewise, one is unable to ascertain why or when Victim Marshall's testimony changed during the course of the investigation. Victim Marshall's memory about the events leading up to the shooting was unclear, and the details of her actions leading up to the shooting and during the shooting changed over time.

The evidence shows that Victim Marshall's description of the events is not accurate. There is evidence of only one gun being fired. It was forensically determined that the bullets recovered were fired from the same gun. A total of six bullets were recovered, again, indicative of one gun. So it is not possible that she saw muzzle flashes from two guns. Further, Victim Marshall's testimony does not account for the damage done to the screen, the broken glass in the window, the glass on the bed, and does not explain the wound paths of the gun shots.

VIII. ANALYSIS

On May 2, 1976, evidence supported two disparate narratives: 1) identified shooters inside the bedroom; or 2) an unknown shooter outside the bedroom window. The only evidence to support the scenario that the shooting occurred inside the bedroom by known assailants was the account given by Victim Marshall. This account was supported by the fact that the defendants were in the vicinity at the time of the shooting and had keys to the apartment. Additionally, it is clear that Defendant Williams was an individual who was well known to law enforcement. He was known to both Detective Bradley and Detective Bowen, and had been arrested several times prior to this event. The police believed Defendant Williams was a dangerous man who was capable of committing the shooting and the murder. Victim Marshall's account was, therefore, consistent with the reputation of the man with whom the police were familiar, and when she identified him as the shooter it was not unreasonable for law enforcement to accept he was involved. Based upon the information provided by Victim Marshall, the police had probable cause to arrest the defendants.

On the other hand, forensically that was not the end of the story. Forensically, physical evidence at the crime scene supported the alternative scenario that the shooting occurred from outside the bedroom window. This, of course, goes back to the hole in the screen, the broken window pane, the glass on the bed, holes in the curtains hanging in front of the window, and the bullet strike on the window frame. But, the evidence to support this theory is more than just the damage to the window. While it was not known to the detectives on the night of the shooting, the bullets collected from this event were fired from the same gun, and there was no evidence of two guns being involved in this event. While not known to the detectives that night, the forensic analyst was able to confirm the damage to the window frame was a bullet

hole, surrounded by carbonaceous material. Later in the investigation the GSR test results showed that the defendants did not have gunshot residue on their hands.

Moreover, the window was the logical shooting position when one looks at the fact that all the entrance wounds on the body of Victim Williams were on the back of her body, and the fact that none of the entrance wounds were on the front of the victims. The irregularly shaped entrance wound on the back of Victim Williams' arm was indicative of the bullet having struck an intervening object, like the screen and window pane or window frame, while there were no intervening objects from the direction of the foot of the bed. Victim Williams, of course, was closest to the window. Victim Williams and Victim Marshall were both moving away from the window, either consciously or unconsciously, which was logical if the window was the origination point. Lastly, when Victim Williams received the fatal shot to her head, she was still wrapped up in the bed covers, her legs were straight with her feet toward the footboard, and her upper body and head were angled toward the window. The wound path of the head wound tracks back to the window, which was confirmed through the use of computer modeling.

Defendants Myers and Williams told the police that they were not involved and had been down the street at a birthday party at the time of the shooting. In it of itself this might not be compelling, but here, there were a dozen or more alibi witnesses who confirmed the defendants' whereabouts at the time the shots were fired. These witnesses were not family members of the defendants, but were friends of the deceased. According to Tony Gordon, when the men were arrested, the party-goers started to protest and shout at the police, voicing that the men were not involved. Tony Gordon, himself, was said to have seen someone firing a gun while standing at the bedroom window. In this same vein, after being offered a deal of either two or five years in prison, Defendant Myers, who was 18-years-old, had never been arrested for a felony, and was facing the death penalty, refused the State's offer to resolve his case and get out of prison by the age of 23.

Law enforcement's focus on seeking evidence that corroborated Victim Marshall's account during the investigation was evidenced during Detective Bradley's deposition. When asked during his deposition why the curtains had not been collected on the night of the incident, Detective Bradley responded that they had received information (from Victim Marshall) that the shooting occurred inside the house, so the officers "went through the investigation like they had been fired from the inside, and from this assuming that we went ahead and checked the evidence from the inside and partial evidence from the outside, not knowing yet what the whole story behind the offense was." (Bradley, p. 12-13). The notion that one would process the scene but discount evidence that was inconsistent with the eyewitness' account that the shooting occurred from the inside is best described as "confirmation bias."

Confirmation bias is "the tendency to bolster a hypothesis by seeking consistent evidence while disregarding inconsistent evidence."[41] "A preference for hypothesis-consistent information undermines accuracy by leading investigators to minimize evidence that challenges their theory of the case, and to construe ambiguous information as consistent with their theory."[42] Confirmation bias has been well established in psychology literature, and how to eliminate confirmation bias in criminal investigations continues to be an area of research at universities and colleges around the country. The work of psychologist Peter C. Wason in the 1960s is considered by many as the beginning of much of the work on confirmation bias. Wason's research and experimentation confirmed that human beings generally look for ways/evidence to support their hypothesis while few people look at ways to disprove the hypothesis. Humans focus on the positive factors supporting their theory and disregard the negative.[43]

Out of this body of work has come confirmation bias research in the context of criminal justice; forensic science, criminal investigations, and prosecution. Research has shown that being provided case information at the outset can impact the findings of forensic scientist, preconceived hypotheses can impact the criminal investigation, and the need to persuade can marry a prosecutor to an incorrect theory of the case, which is known as "theory maintenance."[44] Confirmation bias is part of the human condition and a natural extension of our personal thought process. It is not indicative of malicious intent and is, by no means, unique to law enforcement or prosecution. Our natural inclination to focus on confirmatory information is the catalyst for the scientific method which is designed to construct experiments which attempt to disprove the hypothesis.[45]

One effect of confirmation bias is minimization of potentially exonerating evidence. This occurs when the significance of a piece of evidence is explained in such a way that undermines the reliability of the evidence or otherwise reconciles it with the existing theory of guilt. Here, in the process of investigating the case, investigative work that did not result in evidence that supported the victim's account was minimized. For instance, the bullets were sent off to the forensic laboratory for analysis, but when the result came back concluding that all the bullets were fired from the same gun, that information was ignored. The detectives collected evidence

---

[41] O'Brien, Barbara and Ellsworth, Phoebe C., Confirmation Bias in Criminal Investigations (September 19, 2006)

[42] O'Brien, Barbara, Confirmation Bias in Criminal Investigations: An Examination of the Factors that Aggravate and Counteract Bias (University of Michigan, 2007).

[43] See Nickerson, Raymond S. (Tufts University), Confirmation Bias: A Ubiquitous Phenomenon in Many Guises, Review of General Psychology, 1998, Vol. 2, No. 2, 175-220.

[44] Dror. I. E., & Charlton, D. (2006), Why experts make errors. Journal of Forensic Identification, 56, 600-616; Dror, I. E., Charlton, D., &Peron, A. (2006), Contextual information renders experts vulnerable to making erroneous identification. Forensic Science International, I56, 74-78.; Alafair S. Burke, Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science, 47 Wm & Mary L. Rev. 1587 (2006).

[45] Cline, Austin. "Confirmation Bias: Flaws in Reasoning and Arguments." ThoughtCo., June 22, 2018, thoughtco.com/confirmation-bias-250361.

off the hands of both defendants, but when the GSR test failed to positively identify gun powder residue on the hands of either defendant, the result was explained away by the fact that the defendants might have washed their hands. The window frame was sent off to the forensic laboratory for testing, and when a bullet hole was verified in the frame, with carbonaceous material, it was disregarded. The detectives made note of the holes in the curtains in the general offense report, so there must have been an original belief that the condition of the curtains held some evidentiary value, yet the curtains were not collected and analyzed for gunshot residue. The condition of the curtains then became transformed over time into areas of "dry rot" as described by Detective Bradley during his deposition. The alibi witnesses, who were close friends with the victims, were discounted as people who might lie on Defendant Williams' behalf. The hole in the screen was explained as something that could have been made during a previous event, and the glass on the bed was simply ignored. People on the scene claimed that Tony Gordon said he saw someone standing at the window firing shots, which is corroborated by the physical evidence. Gordon failed the polygraph arranged by the State after he denied that he witnessed the shooting. While the police had probable cause to arrest the defendants, the inconsistencies in Victim Marshall's accounts, the changes to and evolution of her testimony, and the evidence available over the course of this case was sufficiently significant to call the prosecution's attention to the weakness of their premise.

Having focused on Defendant Myers and Williams as the suspects, it does not appear that other potential suspects were developed or pursued. Although not known to law enforcement at the time, Nathaniel Lawson has since confessed to committing this crime. He was present on scene that night, drove away with Rico Rivers, and there is no other known explanation for why he would be present.

IX. CONCLUSION

The CIR investigation has led to the conclusion that the shooting in this case occurred from outside the bedroom window and not from inside the bedroom. This event occurred at night, while the victims were sleeping, and through a bedroom window flanked by curtains, making it physically impossible for Victim Marshall to have identified the shooter. A jury presented with the evidence known by the CIR could not conclude, beyond a reasonable doubt, that either defendant committed the shooting and murder.

The CIR investigation did not develop evidence of malicious intent on the part of any of the individuals involved in this case. Hindsight is always 20/20. Given that many of the individuals who had information regarding this case are now deceased, and the physical evidence is no longer available, attempting to ascertain the "how and why" might be less important in this instance than "this is where we are, so now what?" If we attempt to address

how these men were convicted, it appears that this case was shaped by three significant factors: 1) this death penalty case was tried within two months of the defendants' arrest; 2) the jury never heard any of the physical evidence; and 3) eyewitness testimony is powerful evidence.

The defendants were arrested on May 2, 1976, and this case was tried on July 22, 1976, and then again on September 1, 1976. The trial court controls the court's calendar, but the record suggests that defense counsel never sought a continuance of the trial in this case. Many of the pleadings, motions, forensic reports, and depositions were dated in July 1976. Work was being done on this case up to the date of the original trial. There is no way to know what work might have been foregone or what was overlooked by the defense given the constraint of time. While this may have been the accepted practice in 1976, this is no longer the current trial practice for death penalty cases, and for good reason in light of the fact that individuals are facing the ultimate penalty.

Second, the jury was not given the benefit of any of the potentially exculpatory evidence. Neither the State nor the defense chose to present any of the physical evidence. The State, certainly, did not present evidence inconsistent with its theory of the case, and the defense chose the trial strategy of preserving first and last closing arguments which eliminated the ability to present witnesses or evidence. The jury did not hear from a single one of the multitude of alibi witnesses. These were alibi witnesses who were not related to the defendants and who were friends with the victims. A dozen or more people could have been paraded into court to testify as to the whereabouts of Defendants Myers and Williams at the time the shots were fired. The jury did not receive testimony about the screen with the hole in it. The screen was not entered into evidence and no pictures of it were presented at trial. The jury did not receive testimony about the broken window or the glass on the bed. The jury did not hear that the window had a bullet hole in the frame with carbonaceous material on it. There was no mention of the curtains in front of the window having multiple holes in them. The curtains were not entered into evidence. No argument was made that the victims were moving away from the window during the shooting. It was not mentioned that Victim Williams was shot on her back side, the side which faced the window. There was no argument to question why there were no bullet holes in the pillow or bedding if Victim Marshall was shot in her neck, twice, as she lay on her right side, from the direction of the foot of the bed. There was no mention that the forensic analysis determined that all the bullets were fired from the same firearm, and the analyst was not called as a witness. There was no mention of the fact that only one type of bullet, .38 caliber, was found. There was no mention that the forensic science was indicative of one shooter. The defendants were not called to testify and rebut the testimony of Victim Marshall. Defendant Myers was 18-years-old and had no impeachable criminal history.

During closing arguments, the defense argued that Victim Marshall was a heroin addict and criminal, but they never challenged her reliability as a witness by presenting the evidence which impeached her testimony. Though they argued that her story was "uncorroborated" and "did not make sense," they conceded her description of the shooting, including that there were two shooters inside her bedroom, and simply argued that the shooters were not Defendants Myers and Williams, without suggesting alternative perpetrators. The reality was that Victim Marshall could not have seen the perpetrator who shot through the bedroom window, and would not have known that person's identity. That was the crux of the case and yet it was never argued to the jury. Given the arguments presented, it appears that counsel was either unaware of some of the evidence, failed to interrogate the evidence, or failed to thoroughly investigate the case, which might have to do with the fact that this case was tried within months of the arrests.

While the trial strategy of failing to call witnesses or present evidence to preserve first and last closing argument may have been acceptable in 1976, this practice is no longer allowed. Perhaps once acceptable practice, this strategy fails to explain defense counsels' choice to waive opening statements and leave the jury with nothing but the State's version of events. The trial strategy does not appear well reasoned given the plethora of witnesses and evidence available for the defendants' case in chief. Ultimately, there was only the eyewitness' account for the jury's consideration. Without being able to consider all the evidence, this trial could not be a search for the truth. This poor strategy amounted to ineffective assistance of defense counsel, and the defendants were deprived their right to a fair trial as contemplated by the United States Constitution.

Lastly, the testimony of a victim of a crime is the life-blood of criminal prosecutions, but victims are human beings and human beings are capable of being mistaken. In this case, the eyewitness account shaped the prosecution, although the forensic evidence was not susceptible to inaccurate memory or motives to fabricate. The State of Florida understood that eyewitness testimony is powerful evidence, and effectively argued in closing argument that "[w]hen you have an eyewitness you don't need all the forensics, you don't need all that stuff." But here, they had that "stuff." In a criminal prosecution, the forensic evidence should inform the prosecution, while a reliable eyewitness account corroborates and substantiates the forensic evidence. In foregoing the forensics, the State relied on the testimony of one individual, and it is upon this testimony alone that these two men are serving life sentences, in the face of overwhelming contradictory forensic evidence and alibi testimony.

X. INDEPENDENT AUDIT BOARD

An Independent Audit Board ("IAB") was convened to review the facts and circumstances underlying the convictions of Defendants Myers and Williams at the conclusion of the CIR investigation. The role of the IAB is to provide an independent audit of the facts of the case and investigation conducted by the CIR. The IAB is comprised of independent, outside members of our community at large. In this case, the panel was comprised of two former Fourth Judicial Circuit prosecutors, a retired Fourth Judicial Circuit career public defender, a retired former FBI agent, and a member of the Jacksonville professional, business community. Each panel member was provided a copy of the CIR report, all depositions, the trial transcript, police reports, a forensic analysis report, all written statements, all photographs, medical records, the autopsy report, Florida Department of Corrections records for both defendants, polygraph results, and the report prepared by Knox and Associates. The panel was invited to request additional information or documentation necessary for their review of the investigation.

The panel met as a group on two occasions to discuss the facts and circumstances of this case. During panel discussion, the panel noted that, even if one were to disregard the alibi evidence and the evidence that another individual had confessed to committing the shooting, the surviving victim's statement was not supported by the physical evidence at the scene. The panel placed great weight in the physical evidence documented at the scene, including the hole in the screen, the broken window pane, the glass located on the bed, the holes in the curtains, the bullet strike on the window frame, and the ballistic analysis. The panel unanimously agreed that the evidence supported a finding that the shooting occurred from outside the bedroom window. Of particular interest to the panel was the ballistic report finding evidence of only one gun being used in this event, the fact that the "sound" experiment confirmed that the party-goers were not likely to hear shots fired inside the bedroom, and the fact that Defendant Myers turned down a favorable plea deal that would have resolved his case. Additionally, the panel found the alibi witness testimony credible and gave significant weight to the fact that Nathaniel Lawson confessed to the shooting and could be placed at the scene of the crime at the time the crime was committed.

After reviewing the report, records, and documents, the IAB met to discuss the facts amongst the group, and were unanimous in its finding that there is not sufficient evidence of guilt to support the Defendants' convictions, hence there is evidence to support a lack of faith in the convictions. Additionally, although there is no definitive proof of innocence, such as DNA evidence, the panel agreed that there was sufficient credible evidence to support a finding that the defendants are, in fact, "probably" innocent of the charges.

XI. NEXT STEPS

As a result of the investigation conducted by the Conviction Integrity Review Division, it is the finding of the CIR that: 1) Defendant Myers, and in turn Defendant Williams, has presented claims of actual innocence that are corroborated and substantiated by credible evidence, and 2) Defendant Myers and Defendant Williams did not receive effective assistance of counsel adequate to ensure a fair trial as contemplated by the Sixth Amendment of the United States Constitution. These men would not be convicted by a jury in 2019 if the jury were presented with all the exculpatory evidence.

Based upon the totality of the evidence and information known to the State Attorney's Office as of February 1, 2019, the Conviction Integrity Review Division recommends to the Honorable State Attorney that a determination that the office has lost faith in the convictions of both Defendant Myers and Defendant Williams is warranted. There is no credible evidence of guilt, and likewise, there is credible evidence of innocence. The Conviction Integrity Review Division moves the Honorable State Attorney to file a motion to vacate the convictions of both individuals and, if granted by the Court, to then dismiss the Indictments rendered against Defendant Myers and Defendant Williams. In the alternative, the State of Florida should consent to a motion to vacate the convictions filed by Defendant Myers and Defendant Williams, and if granted by the Court, should then dismiss the Indictments rendered against Defendant Myers and Defendant Williams.

Exhibit A

Exhibit B

Exhibit C

STATE OF FLORIDA

DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

P.O. BOX 1489
TALLAHASSEE 32302

WILLIAM A. TROELSTRUP
COMMISSIONER

TALLAHASSEE REGIONAL CRIME LABORATORY

TELEPHONE
488-7880

July 5, 1976

TO: Honorable Dale Carson
Sheriff, Duval County
Post Office Box 2070
Jacksonville, Florida 32202

ATTN: Deputy R. E. McCoy

RE: CLIFFORD WILLIAMS
Death Investigation
Jeanette WILLIAMS and
Nina MARSHALL
DUVAL COUNTY
05-02-76

FDCLE Lab No. 76 05 11185
Your No. 260140

William A. Troelstrup
Commissioner

D. E. Champagne
Crime Laboratory Analyst

SUBPOENAS PERTAINING TO THIS CASE SHOULD BE DIRECTED AS FOLLOWS: "FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT, CRIME LABORATORY BUREAU, FDCLE LAB NO. 76 05 11185."

REFERENCE:

This report has reference to the following exhibits which were received at this laboratory May 18, 1976 via Registered Mail #511596.

EXHIBITS:

#1 One (1) fired .38 caliber damaged coated lead bullet listed as recovered from head of victim, J. Williams.

#2 One (1) fired .38 caliber damaged lead bullet listed as recovered from left shoulder of victim J. Williams.

#3 One (1) deformed metallic fragment listed as recovered from J. Williams.

(continued)

#4 One (1) fired .32 caliber damaged lead bullet listed as recovered from J. Williams.

#5 One (1) fired .38 caliber damaged lead bullet listed as recovered from N. Marshall.

#6 One (1) fired .38 caliber lead bullet with flattened base listed as recovered from scene.

#7 One (1) fired .38 caliber damaged semi-wadcutter lead bullet.

#8a One (1) window listed as recovered from scene.

#8b One (1) fired .38 caliber damaged lead bullet listed as recovered from scene.

RESULTS:

EXHIBITS #1, #2, #6, #7 and #8b

These bullets were compared microscopically with each other. All were fired from the same weapon.

These bullets bear rifling impressions of 8-grooves, right twist, of dimensions typical of Arminius revolver in .38 Special caliber. Since this is not necessarily the only brand possibly involved, any weapon of the given specifications should be considered for submission to the laboratory.

EXHIBITS #3 and #5

These bullet portions are .38 caliber and bear rifling impressions of only limited identification value with respect to the particular weapon from which fired, due to impact/penetration effects. While some evidence of a relationship was noted with Exhibits #1, #2, #6, #7 and #8b, it was too limited in amount and character for conclusive examination results.

EXHIBIT #4

This bullet bears rifling impressions of 6-grooves, right twist of dimensions typical of Regent, H&R and H&A revolvers in .32 caliber. Since these are not the only brands possibly involved, any weapon of the given specifications should be considered for submission to the laboratory.

(continued)

EXHIBIT #8a

Visual and microscopical examination of this frame revealed an apparent bullet hole in the lower right portion. Examination of the holed area revealed the presence of carbonaceous material (smudge). No other indications of close range gunshot were found.

REMARKS:

Exhibits #1 through #7 and #8b were compared microscopically with submitted evidence bullets in your case numbers #57523, #433362, #262904 and with the unidentified evidence ammunition components in the open case files; all with negative results.

Exhibits #1, #2, #3, #4, #5, #6, #7 and #8b will be retained in the open case files pending submission of suspect weapons.

Exhibit #8a was returned to your agency by UPS on June 17, 1976.

WAT/dec/gar/prg

Exhibit D

Exhibit E

Exhibit F

Exhibit G

Exhibit H

Exhibit I

Exhibit J

Exhibit K

Exhibit L

Exhibit M

Exhibit N

Exhibit O

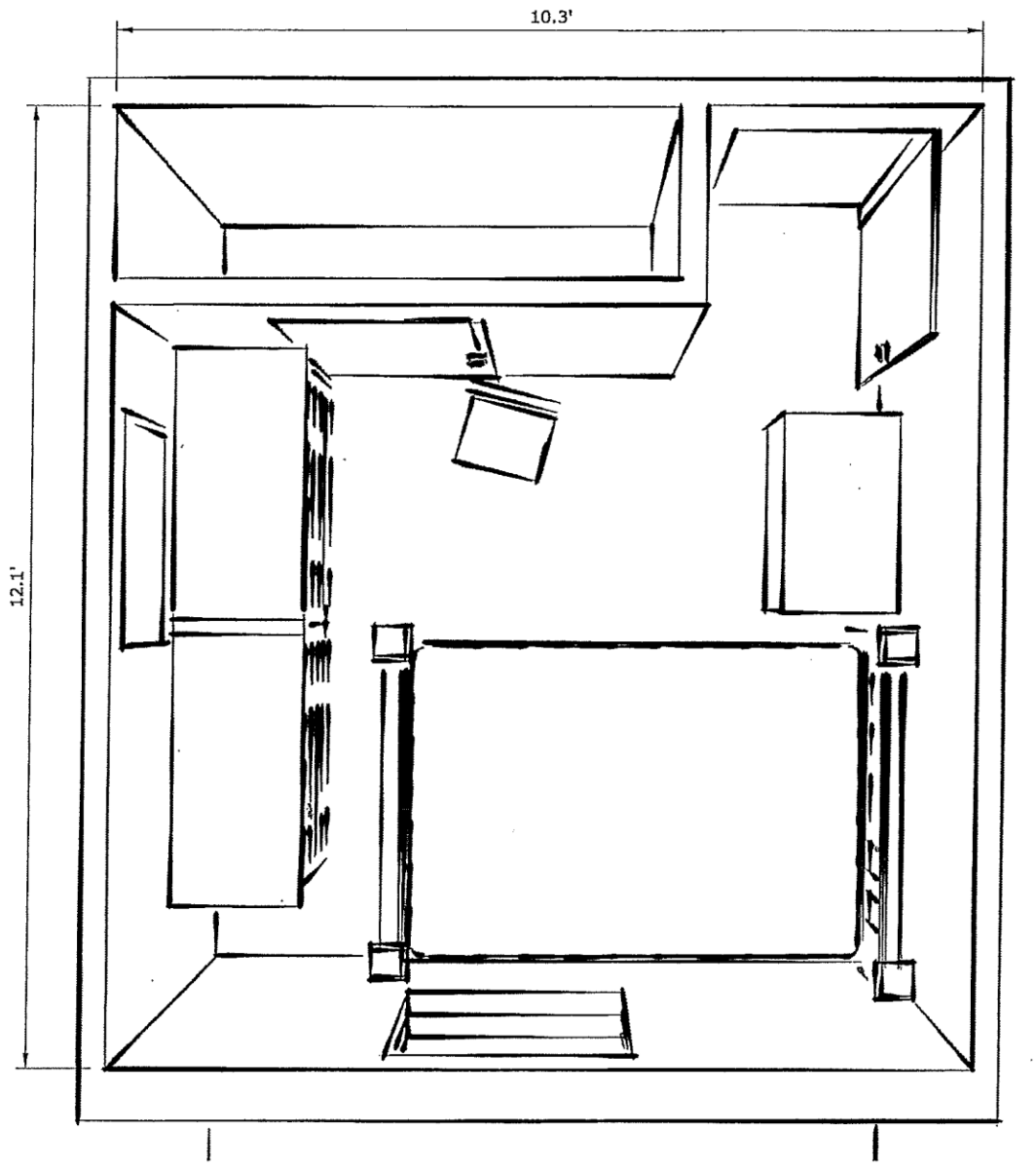


Exhibit P

Exhibit Q

XII. APPENDIX I

SUMMARY OF (ALIBI) WITNESS INTERVIEWS:

May 2, 1976; May 12, 1976 (police interview):

Rachael Jones was interviewed the night of the shooting and confirmed that Mr. Williams and Mr. Myers had been present at the party. The party was at her apartment to celebrate her birthday. She was again interviewed on May, 12, 1976, and confirmed that Mr. Williams, his wife, and Mr. Myers were present at the party. She remembered both Mr. Williams and Mr. Myers being inside the apartment when they heard shots fired. She thought she might have been in her bedroom with Mr. Myers playing records and then stated that Mr. Williams was in the kitchen and Mr. Myers was inside the apartment. (GOR, p. 5, 8).

May 26, 1976 (police interviews):

Nellie Mae Anderson stated that she saw Mr. Williams, his wife, Mr. Myers, and Rico Rivers arrive at the party. She said they got there later but she could not be sure what time. She said that she was eating along with Mr. Williams and Mr. Myers when they heard shots fired. She said that people from the party walked down to the scene after someone came in and said the police were there. She remembered Mr. Williams and Mr. Myers being part of the group that was at the scene. (GOR, p. 11).

Dorothy Benson remembered seeing Mr. Williams and Mr. Myers sitting at the kitchen table eating around 2:00 am. She passed out after that and did not wake up until the following morning. (GOR, p. 12).

Kay Frances Brown told the police she saw Clifford Williams, his wife, Nathan Myers, and Rico Rivers arrive at the party. She fixed a plate of food for everyone, and a short time later, she heard shots. She thought that about 10 minutes later someone said the police were out there. (GOR, p. 9).

Joann Fleming stated she was back and forth to the party. She lives with Debra White in the apartment next to Rachael Jones. She said when she heard shots she looked out of her apartment and saw Mr. Williams come out of Rachael Jones' apartment, walk to

the road, and then go back into the apartment. Approximately 15 minutes later the police arrived, and she walked down the street with Mr. Williams. (GOR, p. 10).

Ethel Howard saw Mr. Williams, his wife, Mr. Myers, and Rico Rivers arrive at the party. She remembered they got a plate of food and started to eat. Shortly thereafter she heard 5 shots which she described as very loud. Approximately 15 to 20 minutes later, she saw police cars. (GOR, p. 11).

Ella Ruth Maddox stated she saw Mr. Williams and Mr. Myers arrive at the party, but she left to take a friend home prior to the shooting. (GOR, p. 10).

Carolyn McDaniel also lives with Debra White and Joann Fleming. She discussed the party with Clifford Williams earlier in the evening while she was at the Pickup Lounge. She said she got to the party between 12:15 and 12:30 and Clifford got there a short time later. (GOR, p. 10-11).

Rosa Lee Royster said that she saw Mr. Williams and Mr. Myers arrive at the party around 12:30 am, they got some food, and started to eat. She saw Mr. Rivers pull up in a white pickup truck and did not remember seeing him around the time the shots were fired. She said the shots sounded very loud and were in rapid succession. She remembered Mr. Williams walking by her with a plate of food in his hands; he walked to the roadway, looked, and walked back to the party saying that someone was firing shots into the air. She left about 20 minutes after that. Ms. Royster also told the police that Jeanette Williams had asked to borrow $100 the day before the incident because she owed Clifford Williams $100 and he was pressing her for it. (GOR, p. 12).

Vanessa Snype stated that she saw Mr. Williams, his wife, Mr. Myers, and another black male come to the party. She said that she did not hear shots fired, but ran back to the party to tell others that the police were there. (GOR, p. 11).

Deborah White stated that she was back and forth between the party and her own apartment. She said that when she heard shots fired that she looked out her front door and saw Mr. Williams coming out of the apartment next door (Rachael Jones) with a plate of food in his hands. (GOR, p. 10).

Virginia Wilkerson was interviewed by the detectives and stated she was with Pauline Dorsey (Dawson) at the party. She saw Mr. Williams and Mr. Myers arrive at the party.

A short time later she heard shots fired and went across the way to her own apartment to check on her children. (GOR, p. 9).

**_The General Offense Report has a notation that the women who provided these statements "are admitted homosexuals and all seem to have a close association with one another."_ (GOR, p. 12-13).

July 16, 1976 (depositions):

Barbara Jean Williams, wife of Clifford Williams, stated she had been at Rip's Corner located on Davis Street prior to going to the party. (p. 6-7). She, Clifford Williams, Nathan Myers, Rico Rivers, and Rosetta Simmon went to the party together (in a pickup truck owned by someone else but driven by Nathan Myers). (p. 17). Ms. Williams stated they stayed at the party once they got there, and she named several people she knew were there. (p. 24-25). Ms. Williams stated that she never saw a gun that night, and that Clifford and Nathan were at the party. (p. 40). When she heard gunshots fired, she remembered seeing Clifford in the living room with a plate of food in his hands. (p.34). Nathan was also in the living room and Rico was standing next to the refrigerator in the kitchen. (p. 35). She remembered Clifford going to the apartment door and looking out and making a comment about a drunk or someone shooting. (p. 37). Barbara Williams stated she left the area around 4:00 am with Rosetta Simmon, Rico Rivers, and Nathan (probably Nathaniel) Lawson. She testified that she, Clifford Williams, and Jeanette Williams were good friends, and that they were all impacted by her death. (p. 42); Barbara Williams\Deposition.pdf

Nellie Mae Anderson testified she was with Carolyn McDaniels when Carolyn told Clifford Williams about the party at Rachael's house. (p.9). She remembered when Clifford got to the party. He was with his wife, Nathan Myers, Rico Rivers, and another black female. (p. 7). She remembered that Mr. Williams came in and got a plate of food. At the time she heard the shots, she remembers Mr. Williams eating in the living room with a plate of food. (p. 11). She testified that Mr. Williams went outside with his plate of food after the shots were fired. (p. 12-13). She described the shots as being very loud. (p. 14). She said she could see Mr. Williams stop on Joann Fleming's porch for a minute on his way back to the apartment, and when he came back in she asked what happened and he told her probably someone trying out their gun. (p. 15). Nathan Myers was

inside the apartment when the shots were fired. (p. 15); Depositions\Nellie Mae Anderson.pdf

Pauline Dawson testified she was at the party when Clifford Williams arrived. He and his wife came into the kitchen where she was sitting. Ms. Dawson stated she offered Barbara Williams her seat because she was pregnant. (p. 6-7). Ms. Dawson remembered seeing Nathan Myers at the party and thinks that she was in the kitchen when she heard gunshots. (p. 7, 9). She stated that when the police arrived, everyone went down toward Jeanette Williams' apartment, including Clifford Williams and Nathan Myers. (p. 10-13); Depositions\Pauline Dawson.pdf

Joann Fleming lived in the apartment next to the party. She testified she remembered Clifford Williams arriving at the party. She saw Clifford Williams, his wife, Nathan Myers, and a friend of his wife's. (p. 7). She remembered sitting on the sofa with Mr. Williams and talking to him. She stated that when she heard shots, she looked up from where she was in her apartment, and saw Mr. Williams come out of the apartment next door, he then went to the street and looked. When he walked back to the apartment, she asked him who was shooting, and he said he did not see anyone. She said she saw Nathan come out of the apartment also, and he sat there and spoke to some girls. (p. 7). When the police got there people walked down to Jeanette Williams' apartment, and she walked down with Clifford Williams. (p. 7); Depositions\Joann Fleming.pdf

Carolyn McDaniels lived in the apartment next to the party with Joann Fleming and Ella Ruth Maddox. She testified that she told Clifford Williams about the party and told him to come by and get some food (because she knew he liked greens). (p. 5). She remembered seeing Clifford Williams, Nathan Myers, and Rico Rivers at the Pickup Lounge, and then she saw them at the party. (p. 7-9, 11). She did not know when they arrived and at some point she fell asleep. People woke her up and she walked down to Jeanette Williams' apartment when the police were there. Clifford Williams was in the back of a patrol car, and when she asked him why, he told her he did not know why. (p. 14); Depositions\Carolyn McDaniels.pdf

Virginia Wilkerson remembers Clifford Williams, Nathan Myers, Barbara Williams, Rico Rivers, and another woman coming to the party shortly after 1:00 am. (p. 9). She remembered seeing them in the kitchen, and Clifford's pregnant wife was offered a seat

at the kitchen table. (p. 12). Ms. Wilkerson described a lot of people being at the party; people were in the living room, kitchen, and both bedrooms. (p. 13). She stated that someone announced that rescue had arrived and everyone from the party went outside to see what was going on, including Clifford Williams and Nathan Myers. (p. 16-17). Ms. Wilkerson stated that she did not understand (how Clifford and Nathan could be involved) because they were at the party, in the living room with everyone, and stated she had been "in the floor jiving with Boonie (Clifford Williams) and them." (p. 18-19). She testified that she and the other women on the street were upset by Baldie's (Jeanette Williams) death because she was like a sister to them. (p. 27); Depositions\Virginia Wilkerson.pdf

July 17, 1976 (deposition):

Rachael Jones was deposed on July 17, 1976. Ms. Jones lived in the apartment where the party took place. She knew Clifford Williams and remembered him arriving at the party with Nathan Myers, a pregnant woman, and a man in a blue jean suit. (p. 12). When the shots were fired, Ms. Jones remembers seeing Mr. Williams sitting on the sofa eating food. The man in the blue suit was standing in the kitchen. (p. 15, 17). Nathan Myers was sitting on a stool by the door eating a plate of food. (p. 17). She testified that after people heard the shots, Clifford and Nathan came out of the apartment to see what was going on. (p. 15, 18). Ms. Jones testified that she wasn't really a friend of Clifford Williams, Nathan Myers, or Nina Marshall, but that she was a friend of Jeanette Williams. (p. 26); Depositions\Rachael Jones.pdf

July 20, 1976 (deposition):

Raymond Rico Rivers stated he knew both Clifford Williams and Nathan Myers, and was with Clifford Williams for most of the afternoon and evening of May 1 into May 2, 1976. He and Clifford Williams had been at the Pickup Lounge and then went to Rip's Corner during the late hours of May 1st. He saw Barbara Williams at Rip's Corner and went to the party at Rachael Jones' apartment with her, her friend Cookie, Nathan Myers, and Clifford Williams. He believed that they arrived around 1:30 am. (p. 13-17).

Mr. Rivers stated they all made their way to Rachael Jones' kitchen to get a plate of food when they got to the party. Mr. Rivers stated that Barbara Williams was sitting at the table in the kitchen, and Mr. Williams had a plate of food and was there talking to her.

He remembered Nathan Myers getting a plate of food and going into the living room to sit in there and eat. Mr. Rivers was confident that Mr. Williams and Mr. Myers had not left the party, and he remembered seeing them with plates of food. (p. 23-25).

After being at the party for approximately 15-20 minutes, Mr. Rivers remembered hearing 4-5 gunshots. At that time, he was still standing in the kitchen eating. His testimony was that Mr. Williams was also in the kitchen, and Nathan was sitting in the living room. (p. 30). He stated when the shots were fired some people outside the apartment ran inside. A few minutes later, he and Williams walked out the front door to see what was going on. Later, when the police arrived, people from the party walked down to see what was going on. (p. 32-35). He was present when Mr. Williams and Mr. Myers were arrested. (p. 35-36); Depositions\Rico Rivers.pdf

XIII. APPENDIX II

..\Desktop\2018 Cases\Files\Myers, Hubert\Knox report.pdf

XIV. ADDENDUM

The CIR was able to locate the family of Jeanette Williams and discussed the reinvestigation of this case with them. After discussing the investigation, the family was invited to submit statements to be attached to this report. Two of Ms. Williams' siblings have provided statements which are attached to this report.

The CIR was unable to locate the family of Nina Marshall despite our attempts to do so.

Joyce Young
December 9, 2018

Subject: Clifford Williams and Nathan Myers

Jeanette Williams, no relation to Clifford Williams, was my sister who as far back as I can remember was a caring and nurturing sister. She looked after me and my nine siblings. She was our protector and on May 2 1976 she was taken away from us. Once a friend she was loyal to the end, a heart of gold and would not hurt a soul.

It is my understanding that those listed above proclaim their innocents. I feel that in my hearts of hearts they are not and if they didn't commit the crime they played a part in it. As far as it goes I forgive them for the final judgement will come from God. My heart continues to ache for the loss of my sister. My mother who is 89 years old still cries and gets depressed when talking about her and while life goes on, the pain continues to linger.

Sincerely,

Joyce Young

Sharon A. Young
157 Rhode Island Ave. NE
Washington, DC 20002

Shelly L. Thibodeau
Director, Conviction Integrity Review Division
State Attorney's Office 4th Circuit
311 Monroe St.
Jacksonville, FL 32202
November 27, 2018

Re: Family of victim Jeannette E. Williams
Letter in reference to Clifford Williams, and Nathan Myers.

Feelings of forgiveness, first for the person/persons responsible for the Death of our loved one and my sister. It is my understanding that developments in the case has changed the original report and statements from witnesses. I am not sure if the developments will or not help the accused, I am sure that if one or both are innocent of the actual shooting, they are not innocent of coming forward before now when others claim to be guilty were alive, I ask the God we serve to punish those guilty of the crime and forgive the innocent if there are any.

I forgive, but I will never forget the pain and sorrow of the tragic death of my sister and those involved, rather they pulled the trigger or had knowledge of who did or ordered it, they are just as guilty. What I am also sure of is the one responsible will pay for their crime if not while living in death. I close with the fact my Mother lost a child, we lost a sister, and others lost a relative and a friend, how do you replace that.

No deed goes unpunished or rewarded. I do believe a life can be turned around and speak from experience, I did not always make the right decisions in life also, when I found the crowd was wrong, I got away from them, because my choice was not to be a criminal, but successful.

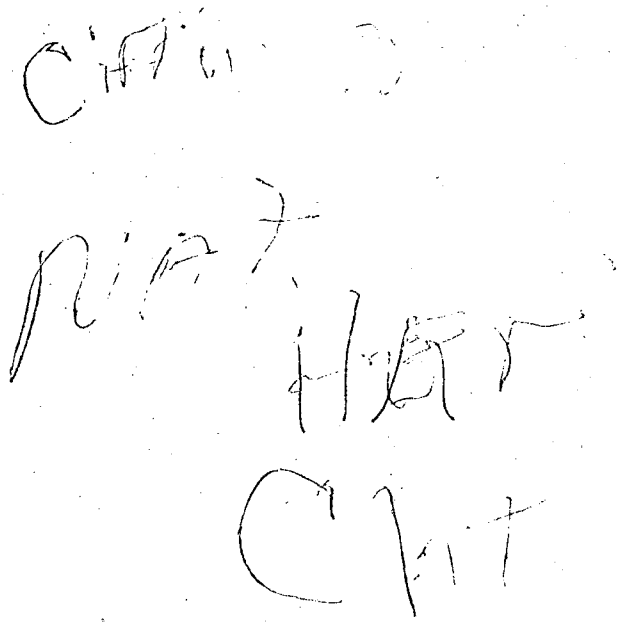
I accomplished that goal in my life, anyone can turn around, or change their lifestyle, that is a choice, and if Mr. Williams, and Mr. Myers choose the wrong path in life, and did not change, then they must suffer the consequences that come with them. May God have mercy on the guilty and innocent.

Respectfully Submitted,

Sharon A. Young

TAB B

(2)



K.P. Monroe '80's
5-7-76 4:15 am
University ave

(3) 90 See Above

Jeanette Williams

KC Monroe 4505
4:5 Am
University EZ

T.C. Howe 5010

5-2-26 4-AM

University Ave.

Clifford Curtiss

Williams, Arthur
024 0502

TAB C

Filed For Identification
State's
Exhibit 2 Date 7/21/76
Case 76-912 CF

Filed in Evidence as State's
Exhibit 19 Date 7/21/76
Case 76-912

OFFICE OF THE MEDICAL EXAMINER
2100 JEFFERSON STREET
JACKSONVILLE, FLORIDA 32206

CCR #260140

RECORD OF IDENTIFICATION OF BODY

I, the undersigned, NATHAN MYERS,

residing at 1550 MORGAN ST- #1 in the City of

JAX-, State of FLA -,

state:

That I am FRIEND (relation) of JEANETTE WILLIAMS

(decedent)

That I have seen the body found at 1550 MORGAN ST- #1

(exact location)

I believe this body is JEANETTE WILLIAMS

whose age was approximately 26 years at the time of death. I last saw or heard from this person on 5-1-76 (date).

X Nathan Myers

Witness: Dr. R.C. Bowen

Date 5-2-76

Location 1550 MORGAN ST- #1

TAB D

STATE OF FLORIDA

DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

P.O. BOX 1489
TALLAHASSEE 32302

WILLIAM A. TROELSTRUP
COMMISSIONER

TALLAHASSEE REGIONAL CRIME LABORATORY

TELEPHONE
488-7880

July 5, 1976

TO: Honorable Dale Carson
Sheriff, Duval County
Post Office Box 2070
Jacksonville, Florida 32202

ATTN: Deputy R. E. McCoy

RE: CLIFFORD WILLIAMS
Death Investigation
Jeanette WILLIAMS and
Nina MARSHALL
DUVAL COUNTY
05-02-76

FDCLE Lab No. 76 05 11185
Your No. 260140

William A. Troelstrup
Commissioner

D. E. Champagne
Crime Laboratory Analyst

SUBPOENAS PERTAINING TO THIS CASE SHOULD BE DIRECTED AS FOLLOWS: "FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT, CRIME LABORATORY BUREAU, FDCLE LAB NO. 76 05 11185."

REFERENCE:

This report has reference to the following exhibits which were received at this laboratory May 18, 1976 via Registered Mail #511596.

EXHIBITS:

#1 One (1) fired .38 caliber damaged coated lead bullet listed as recovered from head of victim, J. Williams.

#2 One (1) fired .38 caliber damaged lead bullet listed as recovered from left shoulder of victim J. Williams.

#3 One (1) deformed metallic fragment listed as recovered from J. Williams.

(continued)

#4 One (1) fired .32 caliber damaged lead bullet listed as recovered from J. Williams.

#5 One (1) fired .38 caliber damaged lead bullet listed as recovered from N. Marshall.

#6 One (1) fired .38 caliber lead bullet with flattened base listed as recovered from scene.

#7 One (1) fired .38 caliber damaged semi-wadcutter lead bullet.

#8a One (1) window listed as recovered from scene.

#8b One (1) fired .38 caliber damaged lead bullet listed as recovered from scene.

RESULTS:

EXHIBITS #1, #2, #6, #7 and #8b

These bullets were compared microscopically with each other. All were fired from the same weapon.

These bullets bear rifling impressions of 8-grooves, right twist, of dimensions typical of Arminius revolver in .38 Special caliber. Since this is not necessarily the only brand possibly involved, any weapon of the given specifications should be considered for submission to the laboratory.

EXHIBITS #3 and #5

These bullet portions are .38 caliber and bear rifling impressions of only limited identification value with respect to the particular weapon from which fired, due to impact/penetration effects. While some evidence of a relationship was noted with Exhibits #1, #2, #6, #7 and #8b, it was too limited in amount and character for conclusive examination results.

EXHIBIT #4

This bullet bears rifling impressions of 6-grooves, right twist of dimensions typical of Regent, H&R and H&A revolvers in .32 caliber. Since these are not the only brands possibly involved, any weapon of the given specifications should be considered for submission to the laboratory.

(continued)

EXHIBIT #8a

Visual and microscopical examination of this frame revealed an apparent bullet hole in the lower right portion. Examination of the holed area revealed the presence of carbonaceous material (smudge). No other indications of close range gunshot were found.

REMARKS:

Exhibits #1 through #7 and #8b were compared microscopically with submitted evidence bullets in your case numbers #57523, #433362, #262904 and with the unidentified evidence ammunition components in the open case files; all with negative results.

Exhibits #1, #2, #3, #4, #5, #6, #7 and #8b will be retained in the open case files pending submission of suspect weapons.

Exhibit #8a was returned to your agency by UPS on June 17, 1976.

WAT/dec/gar/prg

TAB E

Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms

Headquarters Laboratory
Scientific Services Div.
Washington, D.C. 20226

Forensic Branch
Phone: 202-964-6277

Report of Laboratory Examination

D. K. Bryan
Office of the Sheriff
P. O. Box 2070
Jacksonville, Florida 32202

Date: May 18, 1976

Your: CCR ~~#26140~~ 260140

Re: Clifford Williams
Hubert Nathan Myers

Our: 6G-406

Date Exhibits Received: May 8, 1976 Delivered By: Certified mail #283989	
Examination Requested by: Addressee	Type of Examination Requested: Test for gunshot residue by Atomic Absorption

Exhibits:

Ten items, hand swabs with control of Clifford Williams and Hubert Nathan Myers, as described in your transmittal letter dated May 3, 1976.

Findings:

The amount of antimony found in the hand swabs was insufficient to indicate the presence of gunshot residue; therefore, no testing for barium was conducted.

From these findings, no conclusion can be drawn as to whether the subject(s) did or did not handle or fire a weapon.

The exhibits are being returned by registered mail.

Analyst:

William D. Kinard
Forensic Chemist

Reviewer:

C. Michael Hoffman, Chief
Forensic Branch

WDKinard:et 05-18-76

TAB F

SWORN AFFIDAVIT

STATE OF FLORIDA
COUNTY OF SUMTER

Personally appeared before the undersigned officer duly authorized to administer oath in this State and County of Sumter, who, being duly sworn and deposes as follows:

My name is Tony Marvin Brown, I am more than eighteen (18) years of age and I am legally competent to make this sworn affidavit, under my own free will and desire. The matters stated herein are made upon my own knowledge as was told to me by Nathaniel Lawson. While I was living in Jacksonville, Florida on April ___, 1993, at a night club parking lots on Pearl Street, I met an old friend. I hadn't seen for a long time. We got into a conversation about the old days in the projects, and about people we both knew, that was in and out of prison, because Nathaniel knew, I had not long gotten out. The conversation turn to the crime I had committed going to prison, and a number of crimes Nathaniel committed.

Nathaniel started to tell me about this murder he committed and never got caught, that someone else was blame for, is doing time. Nathaniel Lawson confessed to me that one night he tried to kill two people. He told me that he shot and killed Jeannett Williams and shot Nina trying to kill her too.

Nathaniel told me how he went to the apartment peeking in the bedrooms windows looking for Jeannett and he saw her lying in bed. He told me how he was standing outside the bedroom window, when he started shooting, into the bedroom. Nathaniel told me that after he did the shooting, he ran and jump across the fence in the back of the apartment and ran to a car that was driven by Rico Rivers, who was parked waiting for him on Beaver Street. Nathaniel Lawson, told me that Rico Rivers drove him to Hilltop apartments, where they both stayed until the next day. Nathaniel told me that Albert Young paid him to shoot Jeannett because she had not paid him for some heroin that Nina had stole from him. Nathaniel told me how Hubert Myers and his Uncle is in prison for a crime they did not commit. I didn't no if Nathaniel Lawson was lying, bragging, or trying to impress me, by telling me this because, I never question why he was telling this to me and didn't care. While being at Sumter Correctional Institution for a technical parole violation, I have met this guy I have only known for years as Nate, who has turn out to be Hubert Myers. I have told him what Nathaniel Lawson told me and he asked me if I would give him this affidavit, which I have.

The information contained in the foregoing affidavit is personally known to me as confessed by Nathaniel Lawson and is true and correct to the best of my knowledge. I am over eighteen (18) years of age and otherwise competent to testify to such a confession were I called upon to do so before a court of law.

Affiant

Sworn and subscribed to before me this 21 day of October 2014.

Notary Public Seal

#EE117169
Exp 8-1-2015

Personally known ____ or produced Identification ✓ type of identification produced: Florida Department of Corrections Inmate Identification Card.

TAB G

Knox & Associates, LLC

Firearms, Ballistics & Shooting Incident Reconstruction *We Bring Truth to Light*

Forensic Analysis & Reconstruction Report

Case: Conviction Integrity Review
Hubert Nathan Myers
Clifford Williams

Author: Michael A. Knox, Ph.D., CCSR
Chief Forensic Consultant
Knox & Associates, LLC
P. O. Box 8081
Jacksonville, FL 32239
(904) 619-3063
mike@knoxforensics.com
http://www.knoxforensics.com

Prepared For: Shelley Thibodeau, Esq.
State Attorney's Office
Conviction Integrity Review
311 West Monroe Street
Jacksonville, FL 32202

Date of Report: November 27, 2018

K&A Case No.: 18-0027

1. Purpose and Scope

1.1. The purpose of this report is to present findings with regard to the analysis and reconstruction of this incident.

1.2. The scope of this report covers reconstruction and physical evidence.

2. Abbreviations & Terminology

2.1. Sources have been cited parenthetically reflecting document and page number(s).

2.2. Bates number references have been included in brackets.

2.3. Abbreviations:

2.3.1. FDLE: Florida Department of Law Enforcement

2.3.2. GSR: gunshot residue

2.3.3. GSW: gunshot wound

2.3.4. JSO: Jacksonville Sheriff's Office

2.3.5. MEO: Medical Examiner's Office

3. Qualifications & Expertise

3.1. Relevant Expertise

3.1.1. Crime Scene Investigation, Analysis & Reconstruction

3.1.2. Firearms, Ballistics & Shooting Incidents

3.1.3. Gunshot Wound Dynamics

3.1.4. Gunshot Residue & Range of Fire Determination

3.1.5. Bloodstain Pattern Analysis

3.2. Education

3.2.1. Ph.D., Criminal Justice (Nova Southeastern University)

3.2.1.1. Concentration in Behavioral Science

3.2.1.2. Emphasis on Statistical Methods, Data Analysis, Quantitative & Qualitative Research Methodology, Program Evaluation

3.2.1.3. Dissertation topic: *Crime scene behaviors of rampage school shooters: Developing strategies for planning, response, and investigation of active shooter incidents at schools*

3.2.2. M.S., Forensic Science (University of Florida)

3.2.2.1. General Forensic Science Track

3.2.2.2. Coursework included: Coursework included: Principles of Forensic Science; Forensic Medicine; Forensic Anthropology; Forensic Entomology; Blood Distribution & Spatter; Blood Evidence & Serology; Forensic Toxicology; Scientific Evidence & Statistics; and, Laboratory QA/QC.

3.2.3. B.S., Mechanical Engineering (University of North Florida)

3.2.3.1. Emphasis in mechanical systems, materials, mechanics (statics & dynamics), control systems, energy, fluids, thermodynamics, heat transfer, transport phenomena, computational methods, three-dimensional CAD/solid modeling, finite element modeling, and robotics.

3.2.3.2. Provides fundamental academic framework for the study of firearms, ballistics, and shooting reconstruction.

3.3. Experience

3.3.1. Forensic Consultant, Knox & Associates, LLC (2010 - Present)

3.3.2. Police Officer / Detective, Jacksonville (FL) Sheriff's Office (1994 - 2010)

3.3.2.1. Patrol & DUI Enforcement (1994 - 2000)

3.3.2.2. Crime Scene Unit (2000 - 2007)

- 350+ forensic death investigations
- 200+ firearms death investigations
- Hundreds of shooting incident cases

3.3.2.3. Traffic Homicide Unit (2007 - 2010)

3.4. Professional Training Relevant to Firearms, Ballistics, and Crime Scene Reconstruction

3.4.1. Glock Advanced Armorer's Course, Glock Professional, Inc., 16 hours (Smyrna, GA, 2016)

3.4.2. Glock Advanced Armorer's Course, Glock Professional, Inc., 16 hours (Smyrna, GA, 2011)

3.4.3. Optics, Lighting & Visibility for the Forensic Investigator, Clearly Visible Presentations, 32 hours (West Chester, OH, 2011)

3.4.4. Glock Armorer's Course, Glock Professional, Inc., 8 hours (Smyrna, GA, 2011)

3.4.5. Collision Reconstruction Using PhotoModeler, EOS Systems, Inc., 24 hours (Chicago, IL, 2009)

3.4.6. Homicide Investigation, IPTM, 40 hours (Jacksonville, FL, 2006)

3.4.7. Advanced Bloodstain Pattern Analysis, IPTM, 40 hours (St. Petersburg, FL, 2006)

3.4.8. Crime Scene Reconstruction of Shooting Incidents, IPTM, 40 hours (Maitland, FL, 2006)

3.4.9. Firearms Instructor, Northeast Florida Criminal Justice Training Center, 44 hours (Jacksonville, FL, 2005)

3.4.10. Digital Photography for Law Enforcement, IPTM, 24 hours (Jacksonville, FL, 2005)

3.4.11. Bloodstain Pattern Analysis, IPTM, 40 hours (St. Petersburg, FL, 2003)

3.4.12. Crime Scene Reconstruction, IPTM, 40 hours (Jacksonville, FL, 2002)

3.4.13. Scene Mapping Using Speed Lasers, IPTM, 40 hours (Jacksonville, FL, 2001)

3.4.14. Light Energy Applications for Law Enforcement, IPTM, 24 hours (Jacksonville, FL, 2001)

3.4.15. Crime Scene Processing Workshop, IPTM, 40 hours (Jacksonville, FL, 2000)

3.4.16. Crime Scene Techniques for Buried Bodies & Surface Skeletons, IPTM, 40 hours (Jacksonville, FL, 2000)

3.4.17. Basic Evidence Technician, Northeast Florida Criminal Justice Training Center, 40 hours (Jacksonville, FL, 1996)

3.5. Certification & Accreditation

3.5.1. Certified Crime Scene Reconstructionist, International Association for Identification, Crime Scene Certification Board, Certification No. 3024 (Certified 2011, Renewed 2016, Expires 2021)

3.5.2. Certified Glock Pistol Armorer, Glock Professional, Inc. (Certified 2011, Renewed 2016, Expires 2021)

3.6. Teaching

3.6.1. Adjunct Professor, Department of Criminology, Flagler College, 2017-Present

3.6.2. Adjunct Instructor, Forensic Technology, Institute of Police Technology & Management, 2009-Present

3.6.3. Adjunct Instructor, Forensic Technology, Keiser University, 2012

3.6.4. Contract Instructor, U. S. Department of State/International Narcotics & Law Enforcement Program, Tbilisi, Georgia, 2011

3.6.5. Contract Instructor, Crime Scene Technology, Sirchie Fingerprint Laboratories, 2010

3.7. Peer-Reviewed Publications

3.7.1. Knox, Michael A. "Forensic Engineering Analysis Methods Employed for the Purpose of Determining the Location of a Long-Range Shooter

Based on Terminal Bullet Trajectory." Proceedings of the ASME 2012 International Mechanical Engineering Congress & Exposition, November 15-21, 2013, San Diego, California. New York: American Society of Mechanical Engineers.

3.7.2. Knox, Michael A. "Forensic Analysis of an Accidental Firearm Discharge Due to a Blow to an Exposed Hammer Spur." Proceedings of the ASME 2012 International Mechanical Engineering Congress & Exposition. November 9-15, 2012, Houston, Texas. New York: American Society of Mechanical Engineers, 2012.

3.7.3. Knox, Michael A. "Forensic Engineering Analysis of Ejected Cartridge Case Patterns for the Reconstruction of Firearms-Related Incidents." Proceedings of the ASME 2012 International Mechanical Engineering Congress & Exposition. November 9-15, 2012, Houston, Texas. New York: American Society of Mechanical Engineers, 2012.

3.7.4. Knox, Michael A. "Multivariable Monte Carlo Analysis Methods in Traffic Accident Reconstruction Using Python." Proceedings of the ASME 2011 International Mechanical Engineering Congress & Exposition. November 11-17, 2011, Denver, Colorado. New York: American Society of Mechanical Engineers, 2011.

3.7.5. Knox, Michael A. "Forensic Engineering Applications in Crime Scene Reconstruction." Proceedings of the ASME 2010 International Mechanical Engineering Congress & Exposition. November 12-18, 2010, Vancouver, British Columbia, Canada. New York: American Society of Mechanical Engineers, 2010.

3.8. Prior Testimony

3.8.1. My testimony as an expert in crime scene reconstruction and associated topics has been accepted in state courts in Florida, Georgia, Alabama, Texas, Mississippi, Alaska, North Dakota, Illinois, Missouri, and Iowa.

3.8.2. My testimony as an expert in crime scene reconstruction and associated topics has been accepted in United States District Court in Alabama, Pennsylvania, Illinois, Minnesota, Utah, Tennessee, and Florida.

3.8.3. My testimony as an expert in crime scene reconstruction and associated topics has been accepted in United States military court.

3.8.4. A comprehensive list of prior expert testimony has been provided in a separate document.

3.9. Compensation

3.9.1. My analysis and reporting in this case has been provided for a flat rate of $2,500.

4. Scientific Basis for Crime Scene Reconstruction

4.1. The Association for Crime Scene Reconstruction defines the purpose of crime scene reconstruction: "To gain explicit knowledge of the series of events that surround the commission of a crime using deductive reasoning, physical evidence, scientific methods, and their interrelationships."[1]

[1] Association for Crime Scene Reconstruction. Website, accessed January 6, 2012, http://www.acsr.org.

4.2. The process of examining, analyzing, and reconstructing a criminal incident falls under the scientific discipline of forensic crime scene reconstruction.[2] Shooting incident reconstruction and bloodstain pattern analysis are subsets of that discipline.

4.3. A crime scene is a static representation of a dynamic event. The physical evidence left at the scene at the conclusion of a criminal event is the culmination of evidence deposited over the course of time. The crime scene has four dimensions:

4.3.1. width;

4.3.2. height;

4.3.3. depth; and,

4.3.4. time.

4.4. The deposition of evidence at a crime scene is a mechanical process controlled strictly by the laws of physics commonly applied in engineering practice.

4.5. Crime scene reconstruction is a historical science that relies on proxy data to reconstruct past events. Many widely-accepted sciences such as anthropology, archaeology, geology, and paleontology operate in a similar fashion. Crime scene reconstruction typically deals with shorter, more recent time periods and finer resolution than do other proxy data sciences.

4.6. The scientific discipline of forensic crime scene reconstruction applies widely-held principles from the physical and natural sciences to the physical evidence as it is found at a static crime scene in order to determine how that evidence was deposited and to reconstruct the events involved. Crime scene reconstruction is per-

[2] For the purposes of this report, the terms "crime scene" and "crime scene reconstruction" are used; however, the choice of the word "crime" does not imply that, in this or any other case, the involved events should necessarily be interpreted as being criminal in nature. Whether or not a crime is involved, the reconstruction process is the same.

formed given the full context of evidence available to the forensic consultant at the time that the analysis is performed, including physical, documentary, and testimonial evidence. Crime scene reconstruction is an organized, logical process of arriving at proper, scientifically supported conclusions about the events surrounding the creation of the crime scene being examined.

4.7. The crime scene reconstructionist relies upon certain guiding scientific principles, including, but not limited to:

4.7.1. Locard's Exchange Principle;

4.7.2. Cuvier's Principle of the Correlation of Parts;

4.7.3. Steno's Principle of Superposition; and,

4.7.4. Steno's Principle of Lateral Continuity.

4.8. A number of authors have written on the topics of bloodstain pattern analysis, shooting incident reconstruction, and crime scene reconstruction. A list of publications on these and related topics has been included as an appendix to this report.

5. Items Reviewed

5.1. Documents and Information Supplied by Counsel:

5.1.1. Audio:

5.1.1.1. None.

5.1.2. Court Documents:

5.1.2.1. Trial testimony of Nina Marshall.

5.1.3. Depositions:

5.1.3.1. Nina Marshall;

5.1.3.2. John Bradley; and,

5.1.3.3. R. C. Bowen.

5.1.4. Diagrams:

5.1.4.1. Rough diagram by Detective Bowen.

5.1.5. Forensic Reports:

5.1.5.1. FDLE firearms examination report (July 5, 1976); and,

5.1.5.2. ATF GSR report (May 18, 1976).

5.1.6. Interviews:

5.1.6.1. None.

5.1.7. Medical Records/Reports:

5.1.7.1. autopsy report for Jeanette Williams;

5.1.7.2. transcript of trial testimony of Dr. Peter Lipkovic (medical examiner);

5.1.7.3. medical records for Nina Marshall (54 pages); and,

5.1.7.4. transcript of trial testimony of Dr. Sam E. Stephenson, Jr. (surgeon).

5.1.8. Photographs:

5.1.8.1. black & white exterior photographs (19);

5.1.8.2. color exterior photographs (9);

5.1.8.3. color interior photographs (27);

5.1.8.4. photos on compact disc from court clerk (25); and,

5.1.8.5. medical examiner photographs (4).

5.1.9. Presentations:

5.1.9.1. None.

5.1.10. Reports:

5.1.10.1. JSO general offense report (17 pages).

5.1.11. Video:

5.1.11.1. None.

5.2. Examinations and testing carried out by Knox & Associates, LLC:

5.2.1. On May 29, 2018, I examined the apartment where this shooting incident took place and obtained photographs and measurements.

5.2.2. On November 14, 2018, I conducted gunfire sound testing at the incident location.

5.2.3. On November 14, 2018, I conducted gunfire testing with an exemplar aluminum window screen.

6. Computer Software Used in the Analysis

6.1. **SketchUp Pro 2018**: This is an architectural-grade three-dimensional computer-aided modeling package that allows for the accurate reconstruction of architectural scenes. It was used to model the bedroom in which this shooting incident took place, including the relative ground plane outside the bedroom window.

6.2. **Poser 11.1 Pro**: This is a three-dimensional computer modeling package that allows for realistic modeling of human figures. It was used to model the body position of Jeanette Williams.

7. Background

7.1. On May 5, 1976, Jeanette Williams and her companion, Nina Marshall, were in bed at their joint bottom level apartment residence located at 1550 Morgan Street #1 between the hours of 1:00 a.m. and 2:00 a.m. Reportedly, both victims received gunshots wounds while asleep from two shooters within the bedroom. Williams died at the scene.

7.2. Clifford Williams and Hubert Nathan Myers were charged with the shootings and were subsequently convicted and sentenced to prison.

7.3. Knox & Associates, LLC, was retained on or about April 17, 2018 by Assistant State Attorney Shelley Thibodeau to review this case for the purpose of determining if the physical evidence was consistent with the manner in which the shooting was alleged to have occurred.

8. Disclosures

8.1. I have no prior established relationship with this case or any of the parties involved in it.

9. Percipient Witnesses

9.1. Nina Marshall

9.1.1. According to Marshall, Williams was asleep next to her in bed, lying on her right side, on the right side of the bed, with Marshall lying on her right side on the left side of the bed. The TV was on and the lights

off. The curtains were closed (confirmed through scene pics and police report).

9.1.2. Marshall heard the front door unlock and dozed off to a light sleep. Marshall awoke to a stinging sensation in her neck and subsequently realized she had been shot. Marshall moved off the bed and fell onto the floor, feigning death.

9.1.3. Marshal reported seeing two shooters at the foot of her bed, muzzle flashes, and pillow cases covering the weapons. Marshal also stated she did not hear gunshots. After the shots were fired, Marshal, "profusely" bleeding on the bedroom floor, looked toward the front door and observed Clifford Williams and Hubert Myers depart the residence.

9.1.4. When deposed, Marshall provided additional information regarding how the shooting took place:

9.1.4.1. Marshall said she was on her right side watching television on the side of the bed closest to the door with her legs angled toward the window.

9.1.4.2. Williams was on her right side very close to Marshall ("under" her) on the side of the bed closest to the window.

9.1.4.3. Marshall felt a sting in her neck and reacted by moving off the bed.

9.1.4.4. Williams grabbed at the back of Marshall's clothing and then released her grip.

9.1.4.5. Marshall fell to the floor on the left side of bed.

9.1.4.6. Marshall got up, fell on the bed, got up again, and was shot again in the arm before falling to the floor.

9.1.4.7. Marshall stayed on floor while the shooters fled. Marshall then left through the front door.

9.1.5. During her trial testimony, Marshall made several concessions under cross-examinations.

9.1.5.1. Marshall was not able to describe the clothing of the shooters.

9.1.5.2. Cross-examination revealed inconsistencies in Marshall's testimony with respect to her positioning after the initial shots were fired.

9.1.5.3. Marshall did not know the number of people with access to the apartment and admitted that additional keys were possibly unaccounted for.

9.1.5.4. Marshall also could not confirm that the sounds she heard associated with the front door lock could have been the door opening with a person entering or leaving.

10. Crime Scene Analysis & Reconstruction

10.1. Firearms Evidence

10.1.1. One .38 caliber fired bullet was recovered from Marshall. Two .38 caliber fired bullets were recovered from Williams. Three other .38 caliber fired bullets were recovered at the scene. Additional .38 caliber fired bullet fragments were also recovered.

10.1.1.1. The two .38 caliber bullets recovered from Williams, and the three .38 caliber bullets recovered from the scene were identified as having been fired from a single firearm.

10.1.2. There were indications in the general offense/incident report that there were holes in the curtain and screen. A window from the residence was examined, and a laboratory analysis confirmed the presence of a bullet hole and carbonaceous material.

10.1.3. Glass fragments were found on the bed, though investigators minimized the probability that the shots were fired from outside the window.

10.2. Gunfire Sound Testing

10.2.1. Testing was conducted at the incident location to determine the feasibility of gunfire being heard by witnesses at the nearby party with the shooter inside the bedroom versus outside the bedroom.

10.2.2. Shots were fired using an exemplar revolver loaded with .38 Special caliber ammunition fired into a bullet trap with no muzzle occlusion.

10.2.3. Two shots were fired from within the bedroom with the north bedroom window partially open as depicted in the scene photographs.

10.2.3.1. Sound levels were measured using a sound pressure level meter positioned one foot from the firearm. For both shots, the sound level was recorded at 125.7 dB.

10.2.3.2. A digital audio recording device with three microphones was positioned in the location of the party. At the time of this testing, ambient noise was minimal.

10.2.3.3. The recording device captured the gunshots at levels that were barely perceptible and were not measurably louder than the ambient noise level.

10.2.3.4. Several representatives from the State Attorney's Office were present in the vicinity of the recording device, and all reported that the gunfire was only faintly perceptible.

10.2.4. Two shots were fired from a position just outside the bedroom window.

10.2.4.1. Sound levels were measured using a sound pressure level meter positioned one foot from the firearm. Sound levels for the two shots were measured at 121.1 dB and 121.2 dB.

10.2.4.2. The gunfire was clearly perceptible on the audio recordings and to the representatives from the State Attorney's Office.

10.3. Window Screen Gunfire Testing

10.3.1. An exemplar window screen with aluminum screen material was used for live fire testing with the same exemplar revolver and .38 Special ammunition.

10.3.2. Four six-shot volleys were fired with the muzzle positioned at near contact, three inches, six inches, and 12 inches muzzle-to-target range from the screen.

10.3.3. The results indicate that it was possible to fire all six shots forming only a single tear in the screen (see photos in Appendix B).

10.4. Analysis

10.4.1. The building, apartment, and room in which the victims were shot remains intact at the time of this report. I examined the scene of the shooting and obtained photographs and measurements that were used to develop a three-dimensional computer model of the room, including the ground plane outside the window that was adjacent to the bed.

10.4.2. Utilizing the photographs from the original investigation, I reconstructed the location and position of Williams' body and determined that the wound path to the back of Williams' head was most consistent with a shot fired from outside the bedroom window. The other gunshot wounds were non-specific as to location from which they were fired, though all of the gunshot wounds could have been inflicted from outside the bedroom window.

10.4.3. Marshal reported seeing two shooters at the foot of her bed, muzzle flashes, and pillow cases covering the weapons. Marshal also stated she did not hear gunshots. After the shots were fired, Marshal, "profusely" bleeding on the bedroom floor, looked toward the front door and observed Clifford Williams and Hubert Myers depart the residence.

10.4.3.1. Both Williams and Myers possessed keys to the residence and were frequent visitors, occasionally staying at the apartment overnight.

10.4.3.2. The door being unlocked did not alert Marshall as it was not unusual for Williams and Myers to come and go.

10.4.3.3. Marshal said two shooters stepped over her while she lay "profusely" bleeding and motionless on the left side of the bed, adjacent the door to the hallway.

- There was no evidence of bloody footwear impressions (two shod shooters) in scene photographs, or mentioned in police reporting.
- There was a complete left barefoot impression, presumably Marshal's, on bare floor depicted in scene photographs.
- It was considered in this analysis that less blood was present when the shooters departed as compared to the amount of blood depicted in scene photographs; more blood accumulated the longer she remained in position. Additionally, the extent of blood distribution was likely impacted by the exit movement of an actively bleeding Marshal.
- It must also be considered that Marshal reported leaving the residence approximately three minutes after the shooters departed. Detective Bowen however, reported it took him 30-35 seconds to walk from the scene to the back door of the party residence. In order for Marshal to have observed the shooters walking toward the party house, she would have most likely made a hasty departure. The extent of blood distribution around where Marshal was felled, along with the minimal passage of time for deposit, should be considered when evaluating the veracity of Marshal's statement along with the ab-

sence of bloody footwear impressions; two shod shooters stepped aside and over an actively bleeding victim.

10.4.3.4. The report of muzzle flashes is in conflict with Marshal's observation of a pillowcase or similar item covering the weapons. The implied purpose of a pillowcase or similar item to muffle the auditory signature of a discharged weapon would also hide or diminish the muzzle flashes as reported by Marshal.

10.4.3.5. Marshal also reported hearing clicking sounds as she described the shooting event, most likely from a repeatedly pulled trigger on a revolver after all loaded cartridges had been discharged.

10.4.3.6. There was no report of pillowcases discovered in the scene or observed in scene photographs. The absence of singed and gunshot-residue-stained fibers from a gunshot through fabric is in conflict with Marshal's observation of pillowcase-covered weapons during discharge. Additionally, the deposit of this type of material would be expected to be found within the scene given that two handguns were reportedly discharged repeatedly through pillowcases or possibly some other fabric.

10.4.3.7. There were numerous witnesses interviewed by the police who attended the street party the night of the shooting. Gunshots were heard by partygoers. Several witnesses reported five gunshots in succession. Inside and outside positions were reported by these auditory witnesses at the party. The auditory experiment conducted at the scene of the

shooting by Knox & Associates supported the report of outside gunshots being heard by witnesses.

10.4.3.8. The report by Marshal of inside shooting positions with pillowcase-covered weapons to suggest muffled gunshots is in conflict with witnesses who reported the distinct sound of outside gunfire. Although the bedroom window was reported as ajar at the time of the gunshots (confirmed in scene reporting and by Marshall's testimony), muffled inside gunshots as implied by Marshall would most likely not result in the same auditory signature as unmuffled outside gunshots. It is also noted that with an outside shooting position with the window ajar, the "clicking" sounds reported by Marshall would likely be discernible as such from inside the bedroom. The auditory experiment conducted at the scene of the shooting by Knox & Associates disclosed that an unmuffled gunshot was faintly audible with enhanced audio capture and recorded at the location of the party where witnesses were present. It should be noted that witnesses both inside and outside the residence reported hearing distinct gunfire.

10.4.3.9. The likelihood of a shooter(s) entering the residence and taking a position at a furthermost position within the scene (foot of bed, back of bedroom) is in conflict with the ease of which a shooter could take a position outside and effectively hit targets on the bed. An outside position would provide no risk of survivor identification, victim defensive movement, or capture. An outside position would also aid in unimpeded flight.

10.4.3.10. An event sequence that the shooter(s) discharged a weapon outside the window as a ruse to suggest an outside shooting position was determined unlikely. A gunshot initially into the bedroom would alert the victims to the attack and most likely not result in both victims remaining passive targets on the bed. Additionally, two shooters assuming a position at the foot of the bed would bring them past an already clear target from the bedroom door. An additional gunshot through the window would result in seven bullets being fired into the scene while only six bullets/fragments were accounted for. The shooter would also have to reload in flight if there was a staged shot through the window after exit. Furthermore, an additional outside shot is in conflict with witness accounts of hearing multiple gunshots. None of the witnesses reported hearing a gunshot separated in time from the initial shots.

10.4.4. The likelihood that the shooting position was outside the bedroom window is supported by the following items of evidence within the scene and documented in the police report: broken glass on the floor below the bedroom window; the torn window screen; the bullet on the floor directly below the window; and the confirmed bullet hole in the window frame. It was appreciated that the bullet below the window may have originated in another location inside the bedroom and was moved during the event as Marshal evaded attack and fled.

11. Conclusions

11.1. Based on my review of this case, and in light of my training, education, and experience in crime scene reconstruction, I can offer the following opinions in this case for the reasons previously laid out in this report.

11.2. It is most probable that the shots that struck the victims in this case were fired from outside the bedroom window, not from inside the bedroom.

11.2.1. The wound path to the back of Jeanette Williams's head, coupled with the documented position of her body as depicted in the scene photographs, is consistent with the shot having come through the window, not from the foot of the bed.

11.2.2. The location of the fired bullet just inside the window is inconsistent with having come from anywhere inside the room, particularly in the absence of any bullet deflection defects anywhere inside the room.

11.2.3. The location of the bullet fired bullet just inside the window is consistent with the bullet impacting the window frame or some other hard portion of the window as it perforated the window.

11.3. Blood saturation on the floor just inside the bedroom indicates that Marshall remained in that location for some extended period of time after having been shot.

11.4. Gunfire sound testing indicates that it is unlikely that witnesses at the nearby party would have heard the gunfire if it was fired from inside the bedroom.

11.5. The physical evidence in this case is consistent with the shoots having been fired from outside the bedroom window into the bedroom.

12. Documentation Generated by Knox & Associates, LLC

12.1. The following documentation was generated by Knox & Associates, LLC:

12.1.1. photographs (51);

12.1.2. computer modeling;

12.1.3. digital audio recordings.

Disclaimer & Reservation of Rights

Knox & Associates, LLC, reserves the right to amend or otherwise change the conclusions contained herein if new information becomes available that was not known to Knox & Associates, LLC, at the time this report was prepared.

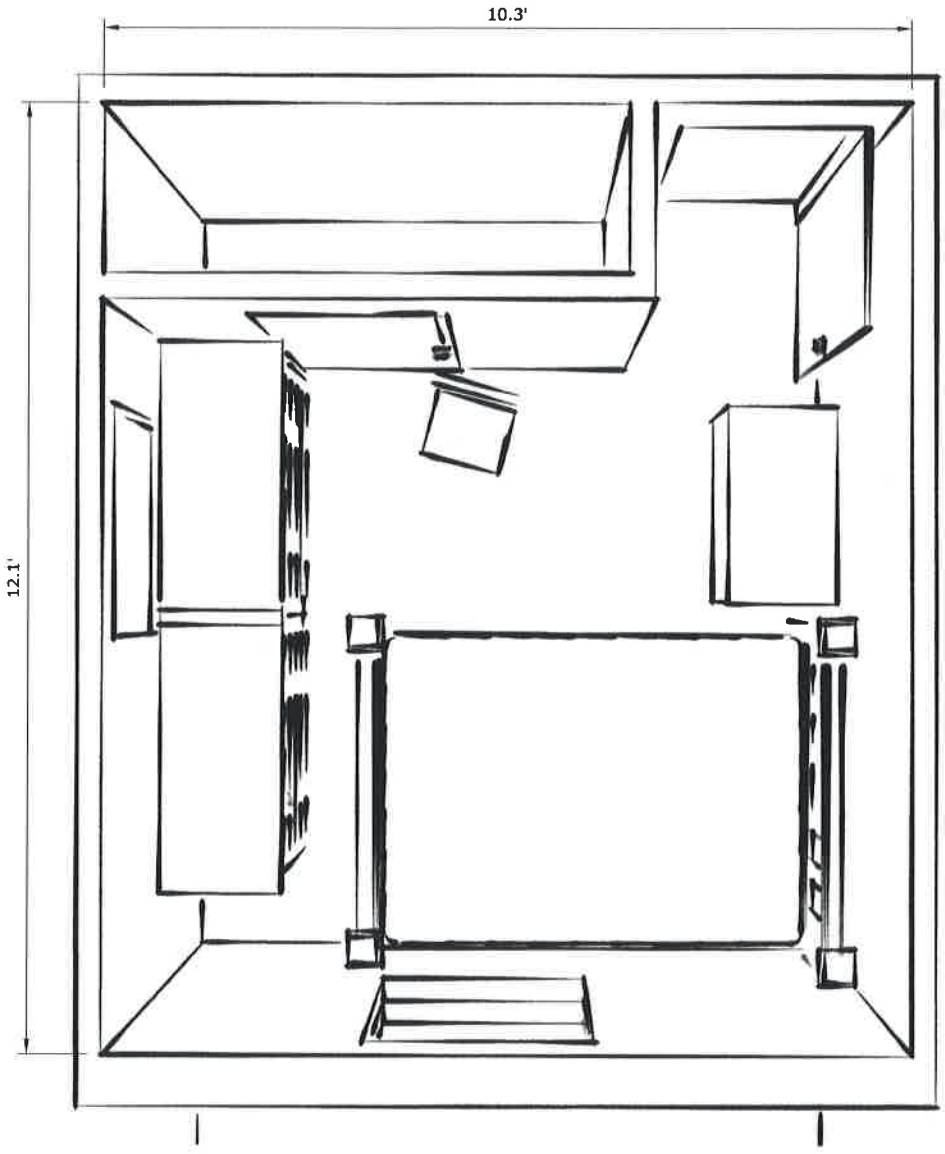
Knox & Associates, LLC, reserves all rights to the content of this report and stipulates that it is to be used solely for the purpose, and during the course, of litigation with respect to this case. Any other use of this material must be done only under written agreement between Knox & Associates, LLC, and the person using the material. Knox & Associates, LLC, reserves the right to refuse use of this material for any purpose not directly related to litigation arising out of this case.

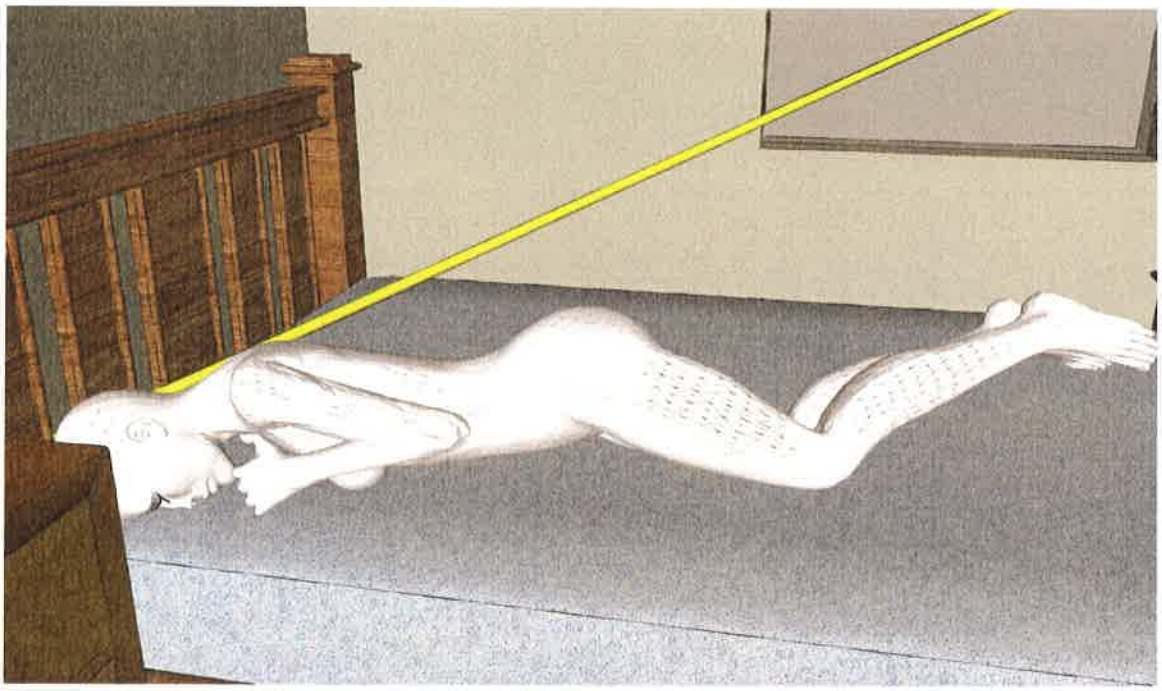
Certification of Truth and Accuracy

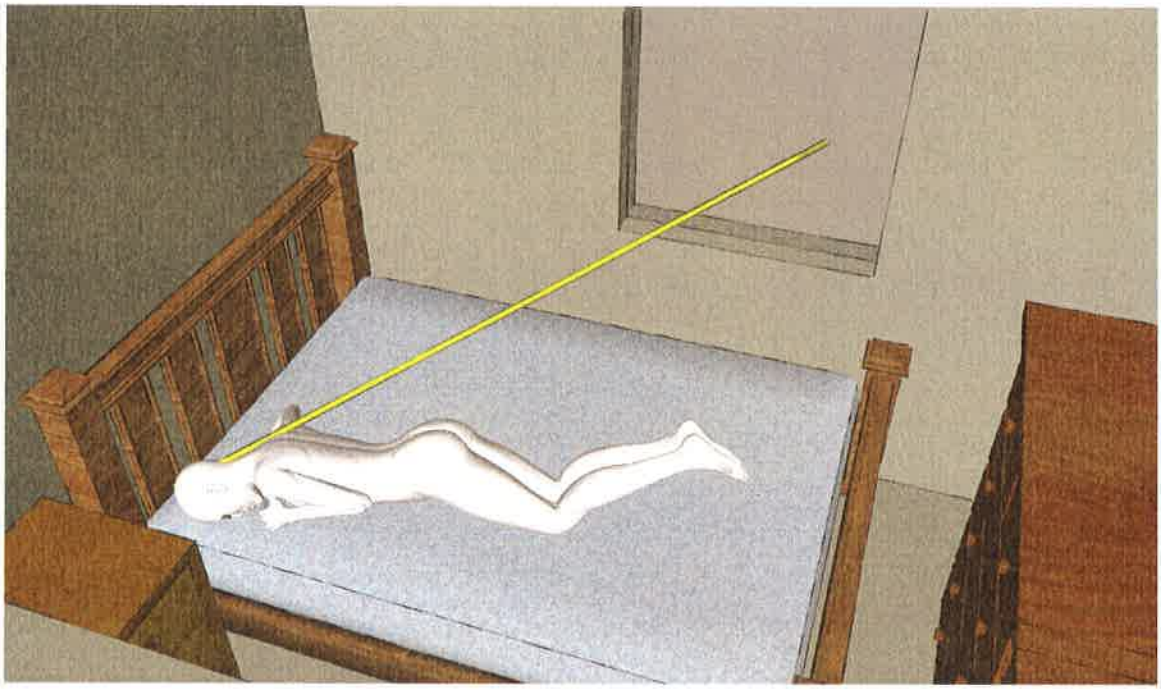
I, the undersigned, Michael A. Knox, as a qualified forensic consultant, do hereby certify this report and attest to its truth and accuracy to the best of my knowledge and ability. The conclusions made herein are my own, have been formed objectively, and have not been made under duress or promise of pecuniary benefit. The analysis and conclusions contained herein have been formed based on my training, education, and experience relevant to the forensic reconstruction of firearms incidents to a reasonable degree of scientific certainty.

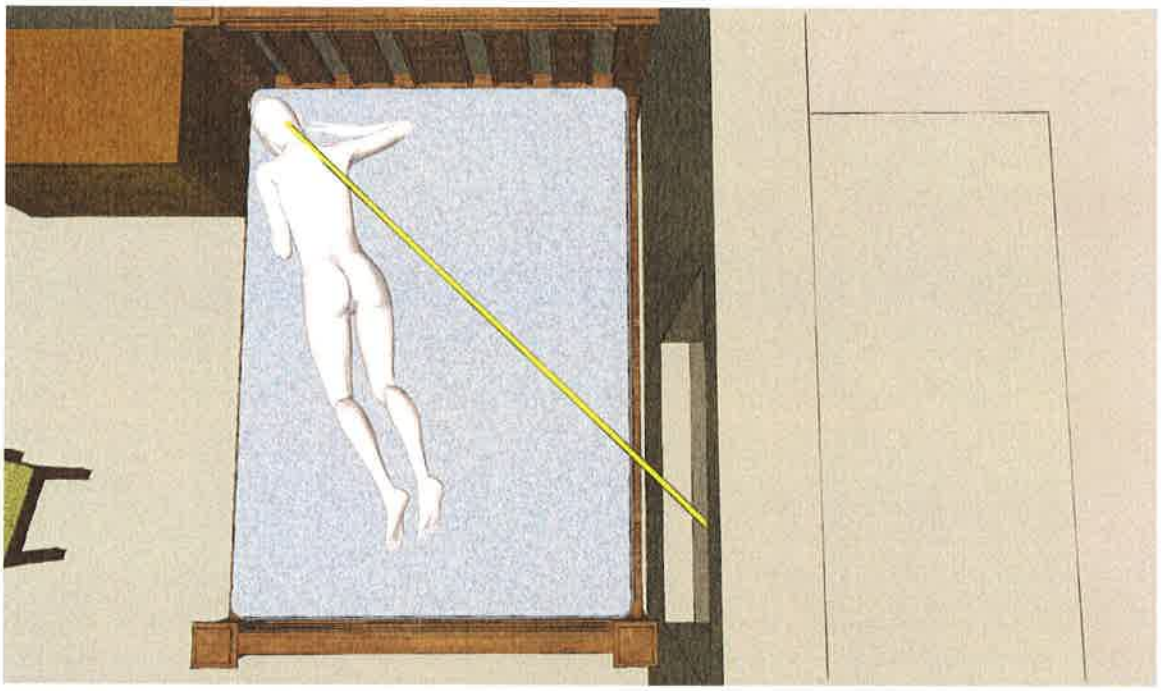
Michael A. Knox, Ph.D.
Board Certified Crime Scene Reconstructionist

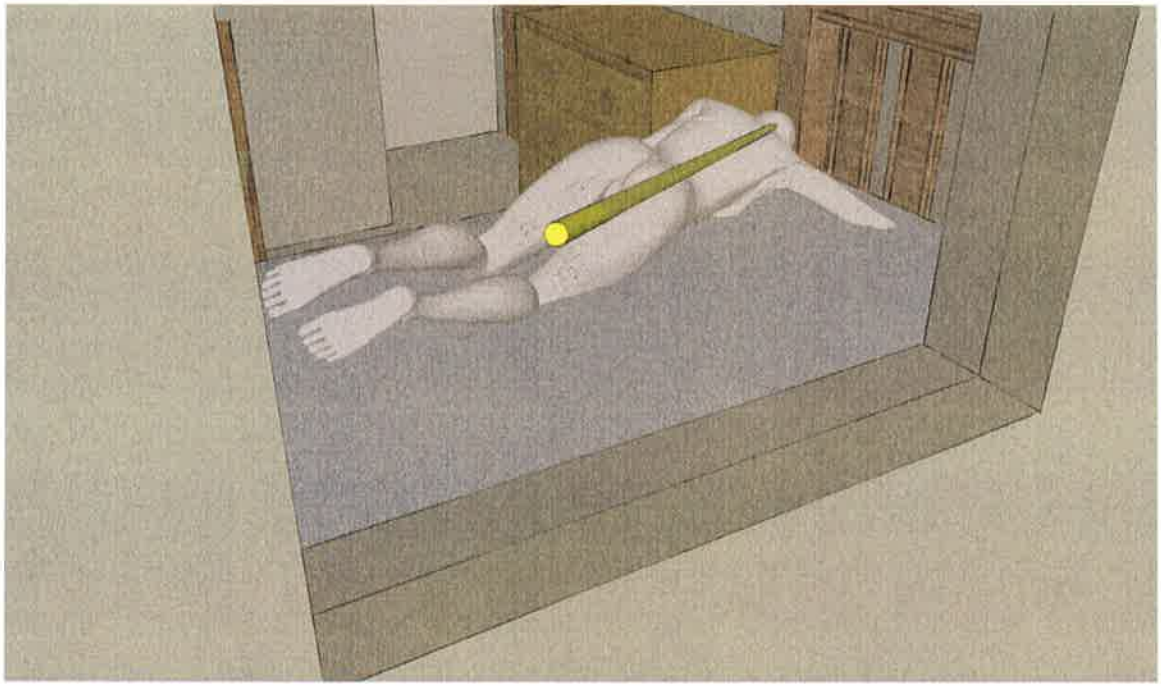
Appendix A: Computer Modeling



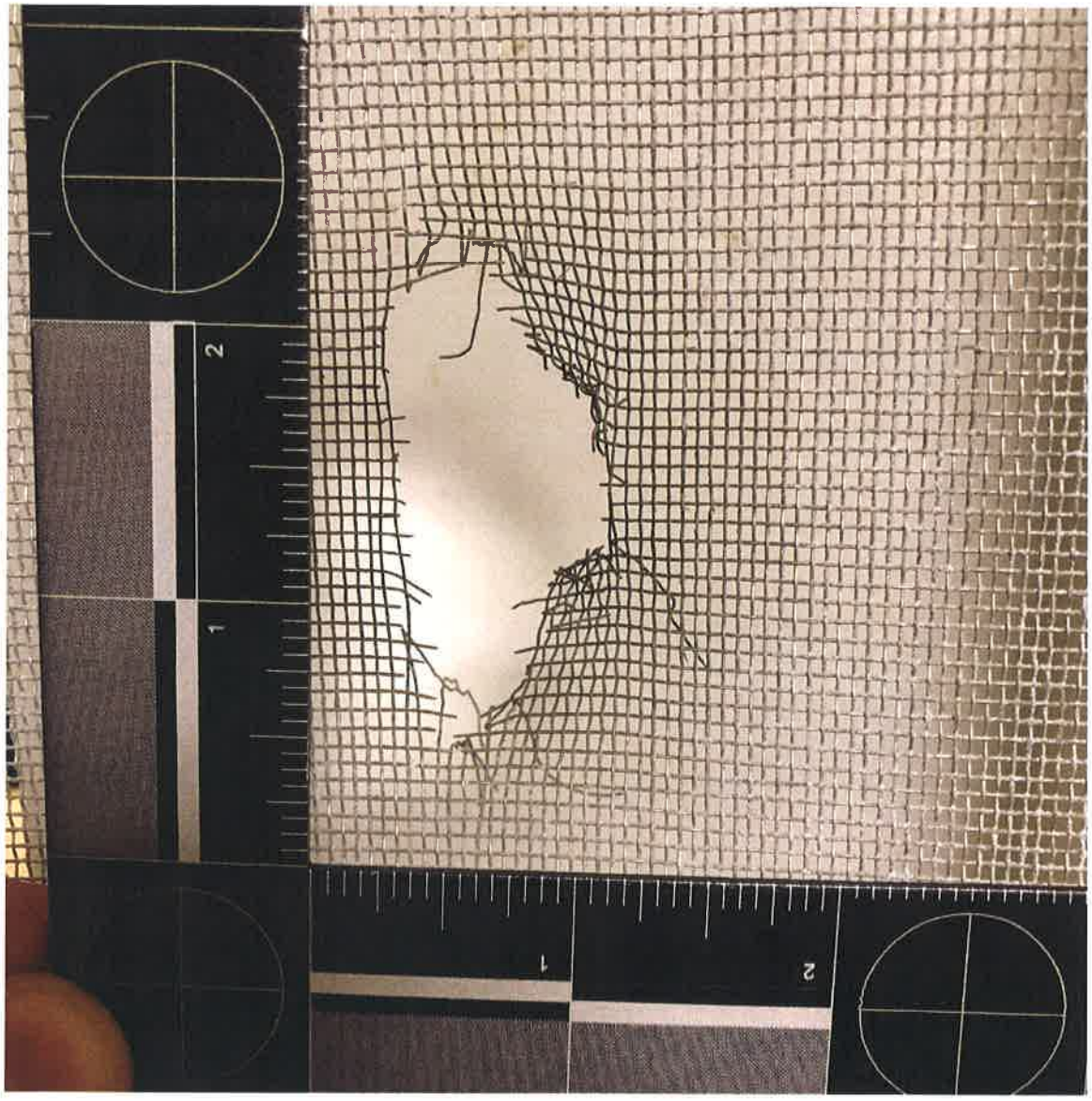




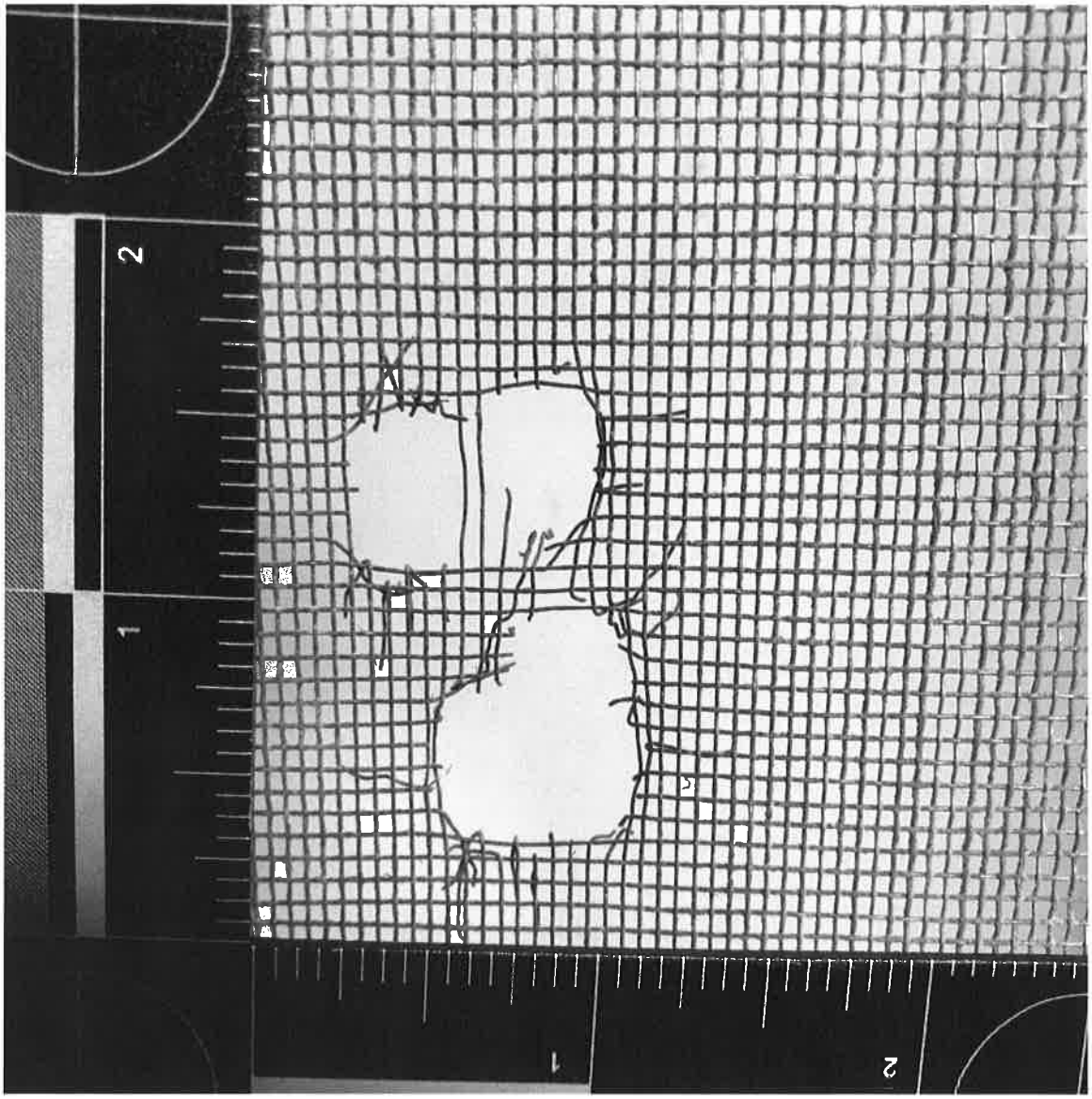




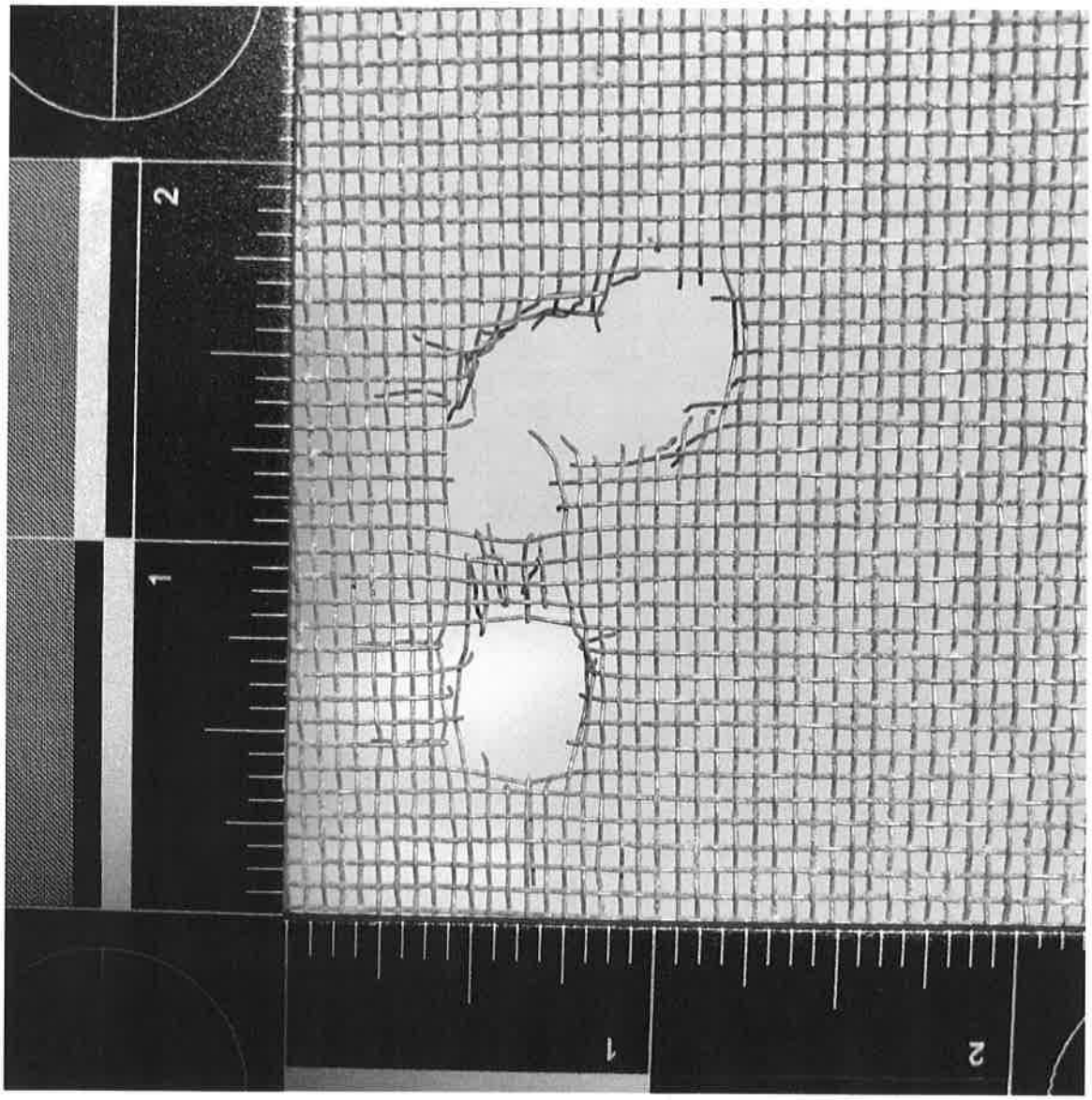
Appendix B: Window Screen Testing



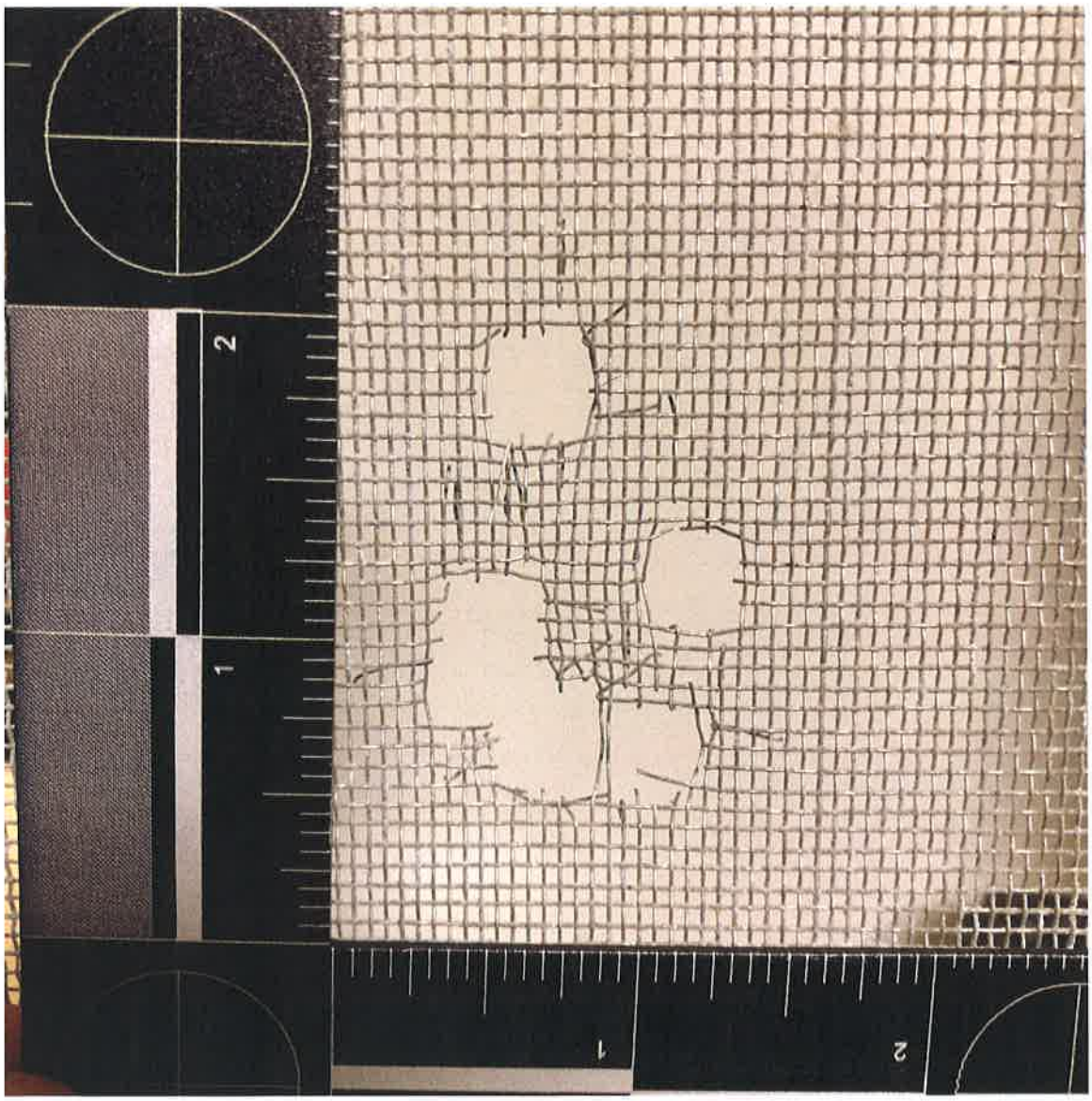
Near Contact



Three inches



Six inches



12 inches

Appendix C: References

(1) Betz, P., Peschel, O., Stiefel, D., & Eisenmenger, W. (1995). Frequency of blood spatters on the shooting hand and of conjunctival petechiae following suicidal gunshot wounds to the head. *Forensic Science International, 76*, 47-53.

(2) Bevel, T., & Gardner, R. (2008). *Bloodstain pattern analysis with an introduction to crime scene reconstruction* (3rd ed.). Boca Raton, FL: CRC Press.

(3) Carlucci, D., & Jacobson, S. (2008). *Ballistics: Theory and design of guns and ammunition*. Boca Raton, FL: CRC Press.

(4) Chapman, A. (2008). *Biomechanical analysis of fundamental human movements*. Champaign, IL: Human Kinetics.

(5) Chisum, W., & Turvey, B. (2007). *Crime reconstruction*. Burlington, MA: Academic Press.

(6) Di Maio, V. (2016). *Gunshot wounds: Practical aspects of firearms, ballistics, and forensic techniques*. (3rd ed.). Boca Raton, FL: CRC Press.

(7) Eliopulos, L. (1993). *Death investigator's handbook: A field guide to crime scene processing, forensic evaluations, and investigative techniques*. Boulder, CO: Paladin Press.

(8) Fisher, B. (1993). *Techniques of crime scene investigation* (5th ed.). Boca Raton, FL: CRC Press.

(9) Gardner, R., & Bevel, T. (2009). *Practical crime scene analysis and reconstruction.* Boca Raton, FL: CRC Press.

(10) Geberth, V. (1996). *Practical homicide investigation: Tactics, procedures, and forensic techniques* (3rd ed.). Boca Raton, FL: CRC Press.

(11) Haag, M., & Haag, L. (2011). *Shooting incident reconstruction* (2nd ed.). Burlington, MA: Academic Press.

(12) Heard, B. (2008). *Handbook of firearms and ballistics: Examining and interpreting forensic evidence*. West Sussex, UK: John Wiley & Sons.

(13) Houck, M., Crispino, F., & McAdam, T. (2017). *The science of crime scenes* (2nd ed.). London: Academic Press.

(14) Hueske, E. (2016). *Practical analysis and reconstruction of shooting incidents* (2nd ed.). Boca Raton, FL: CRC Press.

(15) James, S., & Eckert, W. (Eds.). (1998). *Interpretation of bloodstain evidence at crime scenes* (2nd ed.). Boca Raton, FL: CRC Press.

(16) James, S., & Nordby, J. (Eds.). (2009). *Forensic science: An introduction to scientific and investigative techniques* (3rd ed.). Boca Raton, FL: CRC Press.

(17) Karlsson, T. (1999). Multivariate analysis ('forensiometrics')—a new tool in forensic medicine: Differentiation between firearm-related homicides and suicides. *Forensic Science International, 101*, 131-140.

(18) Kirk, P. (1974). *Crime investigation* (2nd ed.). Malabar, FL: Robert E. Kreiger Publishing Company.

(19) Lewinski, W., Hudson, W., Karwoski, D., & Redmann, C. (2010). Fired cartridge case ejection patterns from semi-automatic firearms. *Investigative Sciences Journal, 2*(3), 1-32.

(20) Luhmann, T., Robson, S., Kyle, S., & Harley, I. (2006). *Close range photogrammetry: Principles, methods and applications*. Hoboken, NJ: John Wiley & Sons.

(21) Molina, D., DiMaio, V., & Cave, R. (2013). Gunshot wounds: A review firearm type, range, and location as pertaining to manner of death. *The American Journal of Forensic Medicine and Pathology, 34*(4), 366-371.

(22) Nordby, J. (2013). *Scientific foundations of crime scene reconstruction: Introducing method to mayhem*. Boca Raton, FL: CRC Press.

(23) O'Hara, C., & O'Hara, G. (1988). *Fundamentals of criminal investigation* (Rev. 5th ed.). Springfield, IL: Charles C. Thomas.

(24) Osterburg, J., & Ward, R. (1992). *Criminal investigation: A method for reconstructing the past*. Cincinnati, OH: Anderson Publishing Co.

(25) Phipps, M., & Petricevic, S. (2007). The tendency of individuals to transfer DNA to handled items. *Forensic Science International, 168*, 162-168.

(26) Shields, L. B. E., Hunsaker, D. M., & Hunsaker, J. C. (2005). Suicide: A ten-year retrospective review of Kentucky medical examiner cases. *Journal of Forensic Science, 50*(3), 1-5.

(27) Spitz, W., & Spitz, D. (Eds.). (2006). *Spitz and Fisher's medicolegal investigation of death: Guidelines for the application of pathology to crime investigation* (4th ed.). Springfield, IL: Charles C. Thomas.

(28) Stone, I. C. (1992). Characteristics of firearms and gunshot wounds as markers of suicide. *The American Journal of Forensic Medicine and Pathology, 13*(4), 275-280.

(29) Tilley, A. (2002). *The measure of man and woman: Human factors in design* (Rev. ed.). New York: John Wiley & Sons.

(30) Wallace, J. (2008). *Chemical analysis of firearms, ammunition, and gunshot residue.* Boca Raton, FL: CRC Press.

(31) Walton, R. (2006). *Cold case homicides: Practical investigative techniques.* Boca Raton, FL: CRC Press.

(32) Warlow, T. (2012). *Firearms, the law, and forensic ballistics* (3rd ed.). Boca Raton, FL: CRC Press.

(33) Whiting, W., & Zernicke, R. (2008). *Biomechanics of musculoskeletal injury* (2nd ed.). Champaign, IL: Human Kinetics.

(34) Wonder, A. (2001). *Blood dynamics*. San Diego, CA: Academic Press.

TAB B

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA, Plaintiff,	)	
	)	Case No. 1976-CF-000912
v.	)	
CLIFFORD WILLIAMS, JR., Defendant-Movant	)	

ORDER VACATING DEFENDANT'S JUDGMENT AND SENTENCES

THIS CAUSE, having come to be heard upon the Defendant's Motion for Postconviction Relief and to Vacate Judgment and Sentence Pursuant to Fla. R. Crim. P. 3.850, filed on March 28, 2019, and based on the State consenting to the entitlement to relief, the Court finds sufficient cause to grant the requested relief in this matter. The Court makes the following findings:

(1) The Defendant, CLIFFORD WILLIAMS, JR., was convicted of First-Degree Murder and Attempted First-Degree Murder on September 2, 1976. After the Florida Supreme Court reversed his death sentence, he was resentenced to concurrent sentences of life imprisonment and 30 years imprisonment;

(2) In January 2018, the State Attorney's Office for the Fourth Judicial Circuit created the Conviction Integrity Review Division (CIR) to investigate and review claims of actual innocence and make recommendations on appropriate relief;

(3) The CIR performed a comprehensive and thorough review in the instant case, and performed additional investigation not previously available to this Court, the parties or the original jury;

(4) On February 25, 2019, the CIR tendered its report to counsel for the Defendant, in which it found that:

a. Available and new evidence contradicted the State's trial theory and its only material fact witness from trial;

b. Another man confessed to a number of people that he committed the shooting by himself, and independent investigative evidence available at the time of trial confirmed that he was present at the scene at the time of the shooting; and

c. Multiple alibi witnesses recalled being with both the Defendant and his co-Defendant at a nearby party at the same time they heard the shots fired during the crime, demonstrating the innocence of both defendants.

(5) The CIR Report recommended that the Defendant's convictions and sentences be vacated, concluding that a "jury presented with the evidence known by the CIR could not conclude, beyond a reasonable doubt, that either defendant committed the shooting and murder," and that there "is no credible evidence of guilt, and likewise, there is credible evidence of innocence."

(6) On March 28, 2019, the Defendant filed a Motion for Postconviction Relief alleging that both the conclusions and recommendation on relief contained in the CIR Report, and certain new information produced by the CIR investigation, are newly discovered evidence upon which his convictions and sentences should be vacated.

(7) The State has consented to this Court granting the relief sought in the Motion for Postconviction Relief and stipulated that, upon issuance of this Order, it will file a Notice of Nolle Prosequi, dropping pending charges in this matter and effectuating the Defendant's immediate release from custody.

(8) This Court finds that the contents and findings contained in the CIR report support relief being granted.

(9) It is well settled that a court may grant a new trial based on newly discovered evidence if (1) the evidence was discovered since the former trial; (2) the party used due diligence at the time of trial to find such evidence; (3) the evidence is material to the issue; (4) the evidence goes to the merits and does not merely impeach the character of a witness; (5) the evidence is not merely cumulative; and (6) the evidence is such as to probably change the outcome of the trial. Smith v. State, 158 So. 91, 93 (Fla. 1934).

(10) The evidence discovered since the former trial of the sound experiment and the crime reconstruction report, evidence that the person who confessed to the crime was actually at the scene at the time of the shooting, evidence that there was a witness at the time of the shooting who saw a single shooter outside the bedroom window, expert computer modeling which shows the wound path back to the bedroom window, is indeed material and goes directly to the merits of the case. This evidence is not merely cumulative.

(11) The Court's role is to interpret the law; however, that interpretation is founded on the principles of justice. Justice is the paramount, indeed the exclusive interest, which concerns us. See Jackson v. State, 416 So. 2d 10, 10 (Fla. 3d DCA 1982). In this case, justice requires that a jury, if the State proceeds on this case, should hear the evidence before the Defendant may be convicted and imprisoned for the crimes with which he is charged.

(12) Thus, the newly discovered evidence is of such a nature that would probably produce an acquittal on retrial. See Jones v. State, 591 So. 2d 911, 915-16 (Fla. 1991).

Accordingly, it is hereby

ORDERED that the Judgment and Sentences entered against the Defendant on October 27, 1976 in the above-referenced case number are hereby VACATED.

DONE AND ORDERED, at Jacksonville, Duval County, Florida on this 28th day of March, 2019.

Angela M. Cox, Circuit Judge

Copies to: Department of Corrections

Hon. Melissa Nelson, State Attorney
Shelley Thibodeau, Assistant State Attorney

George E. "Buddy" Schulz, Holland and Knight, Buddy.Schulz@hklaw.com
Counsel for the Defendant Clifford Williams

Seth Miller and Krista Dolan, Innocence Project of Florida
smiller@floridainnocence.org
Counsel for the Co-Defendant Nathan Myers

TAB C

961.03. Determination of status as a wrongfully incarcerated person; determination of eligibility for compensation
Effective: October 1, 2017

(1)(a) In order to meet the definition of a "wrongfully incarcerated person" and "eligible for compensation," upon entry of an order, based upon exonerating evidence, vacating a conviction and sentence, a person must set forth the claim of wrongful incarceration under oath and with particularity by filing a petition with the original sentencing court, with a copy of the petition and proper notice to the prosecuting authority in the underlying felony for which the person was incarcerated. At a minimum, the petition must:

1. State that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence; and

~~2. State that the person is not disqualified, under the provisions of s. 961.04, from seeking compensation under this act.~~

(b) The person must file the petition with the court:

1. Within 90 days after the order vacating a conviction and sentence becomes final if the person's conviction and sentence is vacated on or after July 1, 2008.

2. By July 1, 2010, if the person's conviction and sentence was vacated by an order that became final prior to July 1, 2008.

(2) The prosecuting authority must respond to the petition within 30 days. The prosecuting authority may respond:

(a) By certifying to the court that, based upon the petition and verifiable and substantial evidence of actual innocence, no further criminal proceedings in the case at bar can or will be initiated by the prosecuting authority, that no questions of fact remain as to the petitioner's wrongful incarceration, ~~and that the petitioner is not ineligible from seeking compensation under the provisions of s. 961.04~~; or

(b) By contesting the nature, significance, or effect of the evidence of actual innocence, the facts related to the petitioner's alleged wrongful incarceration~~, or whether the petitioner is ineligible from seeking compensation under the provisions of s. 961.04~~.

(3) If the prosecuting authority responds as set forth in paragraph (2)(a), the original sentencing court, based upon the evidence of actual innocence, the prosecuting authority's certification, and upon the court's finding that the petitioner has presented clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense, shall certify to the department that the petitioner is a wrongfully incarcerated person as defined by this act. Based upon the prosecuting authority's certification,

the court shall also certify to the department that the petitioner is eligible for compensation ~~under the provisions of s. 961.04~~.

(4)(a) If the prosecuting authority responds as set forth in paragraph (2)(b), the original sentencing court shall make a determination from the pleadings and supporting documentation whether, by a preponderance of the evidence, the petitioner is ineligible for compensation under ~~the provisions of s. 961.04~~, regardless of his or her claim of wrongful incarceration. ~~If the court finds the petitioner ineligible under the provisions of s. 961.04, it shall dismiss the petition~~.

(b) If the prosecuting authority responds as set forth in paragraph (2)(b), and the court determines that the petitioner is eligible ~~under the provisions of s. 961.04~~, but the prosecuting authority contests the nature, significance or effect of the evidence of actual innocence, or the facts related to the petitioner's alleged wrongful incarceration, the court shall set forth its findings and transfer the petition by electronic means through the division's website to the division for findings of fact and a recommended determination of whether the petitioner has established that he or she is a wrongfully incarcerated person who is eligible for compensation under this act.

(5) Any questions of fact, the nature, significance or effect of the evidence of actual innocence, and the petitioner's eligibility for compensation under this act must be established by clear and convincing evidence by the petitioner before an administrative law judge.

(6)(a) Pursuant to division rules and any additional rules set forth by the administrative law judge, a hearing shall be conducted no later than 120 days after the transfer of the petition.

(b) The prosecuting authority shall appear for the purpose of contesting, as necessary, the facts, the nature, and significance or effect of the evidence of actual innocence as presented by the petitioner.

(c) No later than 45 days after the adjournment of the hearing, the administrative law judge shall issue an order setting forth his or her findings and recommendation and shall file the order with the original sentencing court.

(d) The original sentencing court shall review the findings and recommendation contained in the order of the administrative law judge and, within 60 days, shall issue its own order adopting or declining to adopt the findings and recommendation of the administrative law judge.

(7) If the court concludes that the petitioner is a wrongfully incarcerated person as defined by this act and is eligible for compensation as defined in this act, the court shall include in its order a certification to the department that:

(a) 1. The order of the administrative law judge finds that the petitioner has met his or her burden of establishing by clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense; or

2. That the court has declined to adopt the findings and recommendations of the administrative law judge and finds that the petitioner has met his or her burden of establishing by clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense; and

(b) The original sentencing court determines the findings and recommendations on which its order is based are supported by competent, substantial evidence.

(8) The establishment of the method by which a person may seek the status of a wrongfully incarcerated person and a finding as to eligibility for compensation under this act in no way creates any rights of due process beyond those set forth herein, nor is there created any right to further petition or appeal beyond the scope of the method set forth herein.